

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v

GROUPON, INC.,

Defendant.

: CIVIL ACTION

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: NO. 16-122-LPS

Wilmington, Delaware
Monday, July 16, 2018
Jury Trial - Volume A

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge, and a jury

APPEARANCES:

POTTER ANDERSON & CORROON, LLP
BY: DAVID E. MOORE, ESQ.,
BINDU A. PALAPURA, ESQ., and
STEPHANIE E. O'BYRNE, ESQ.

and

DESMARAIS, LLP
BY: JOHN DESMARAIS, ESQ.,
KARIM Z. OUSSAYEF, ESQ.,
LAURIE STEMLER, ESQ.,
KEVIN K. McNISH, ESQ.,
MICHAEL MATULEWICZ-CROWLEY, ESQ.
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BRIAN D. MATTY, ESQ., and
EDWARD GEIST, ESQ.
(New York, New York)

Counsel for Plaintiff

Dale Hawkins
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1 APPEARANCES: (Continued)

2 ASHBY & GEDDES, P.A.

3 BY: JOHN G. DAY, ESQ., and
4 ANDREW C. MAYO, ESQ.

5 and

6 FENWICK & WEST, LLP

7 BY: J. DAVID HADDEN, ESQ.,
8 SAINA M. SHAMILOV, ESQ.
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11 JESSICA M. KAEMPF, ESQ.,
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14 (Mountainview, California)

15 Counsel for Defendants

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17 P R O C E E D I N G S

18 (REPORTER'S NOTE: The following jury trial was
19 held in open court, beginning at 9:47 a.m.)

20 THE COURT: Good morning.

21 (The attorneys respond, "Good morning, Your
22 Honor.")

23 THE COURT: A special welcome to the members of
24 our jury pool. My name is Leonard Stark. I'm the Chief
25 Judge of the United States District Court for the District
of Delaware. I'm the judicial officer who will be presiding

1 over the trial for which we are to select a jury. As
2 you likely already know, serving on a jury is one of the
3 responsibilities and privileges that we all share as
4 citizens of the United States. We're all very grateful to
5 you for taking time out of your schedules and your lives to
6 allow us to consider placing you on this jury. I will have
7 some more instructions for you in just a moment about this
8 selection process. It is likely to take a good part of the
9 day but we will be moving along just as quickly as we
10 possibly can.

11 The first order of business is for me to
12 introduce my deputy Mr. Neil lobby. He is going to
13 administer an oath. Mr. Looby.

14 (Prospective jurors placed under oath.)

15 THE COURT: Thank you.

16 So we're now going to begin what is called the
17 voir dire process. The voir dire is going to involve my
18 reading you a very brief description of what this trial is
19 about and who the parties are and then reading out loud to
20 you 16 requests. All of the questions are in a yes/no
21 format. As I read them, please listen carefully to the
22 questions and try to think to yourself as I go along whether
23 you have a "yes" answer to my of my 16 questions. There is
24 no need for the members of the jury pool to stand up or to
25 raise their hands or to say anything out loud in response to

1 my questions at this time. Just please listen and think to
2 yourself do you have a "yes" answer to any of them.

3 After I have read all of the questions, I will
4 move to my jury room which is right behind where I'm
5 sitting. Some of the lawyers will join me and a court
6 reporter and then members of my staff will bring in those of
7 you who tell us you had a "yes" answer. You will come in
8 one by one and we'll discuss your concerns. All right? So
9 that is where we are headed.

10 Let me now begin reading to you the voir dire.

11 This is a patent case. The plaintiff in this
12 case is International Business Machines Corporation, also
13 known as "IBM." The defendant is Groupon Inc. IBM contends
14 that Groupon infringes four patents and seeks money damages
15 to compensate it for that infringement. Groupon denies
16 that it infringes any valid patent and denies that IBM is
17 entitled to any damages.

18 In light of this brief summary, I will ask you
19 certain questions, the purpose of which is to: (1) enable
20 the Court to determine whether or not any prospective juror
21 should be excused for cause; and (2), enable counsel for the
22 parties to exercise their individual judgment with respect
23 peremptory challenges, that is, challenges for which no
24 reason need be given by counsel.

25 I will now read those questions to you.

1 Question 1 is: Are you familiar with this case
2 or have you heard or read anything about it?

3 Question 2. Counsel will now introduce
4 themselves. After they do so, I will ask you whether you or
5 any members of your immediate family or anyone close to you
6 know of or have any current or former relationship with any
7 of the attorneys or their law firms.

8 All right. First for IBM.

9 MR. DESMARAIS: Thank you, Your Honor.

10 THE COURT: Good morning.

11 MR. DESMARAIS: John Desmarais from Desmarais
12 LLP. Karim Oussayef from Desmarais LLP, Laurie Stempler
13 from Desmarais LLP.

14 Mr. Moore.

15 MR. MOORE: David Moore from Potter Anderson.

16 MS. PALAPURA: Bindu Palapura from Potter
17 Anderson.

18 THE COURT: Okay. Thank you. Now for Groupon.

19 MR. HADDEN: Thank you. Good morning. David
20 Hadden from Fenwick & West. This is Saina Shamilov, also
21 from Fenwick & West. Phillip Haack Fenwick & West.

22 Also with us are members of our team: Dave
23 Weinberg and Phil Dunham.

24 And John Day from Ashby & Geddes.

25 THE COURT: Thank you. So ladies and gentlemen

1 of the jury pool. Question 2 is: Are you related to or
2 personally acquainted with any of those attorneys or their
3 firms?

4 Question 3. The parties in this case are
5 International Business Machines Corporation (IBM) and
6 Groupon Inc. Do you know any of the parties or any of the
7 following:

8 A. Prodigy Services Company.

9 B. Trintex.

10 Question 4. Have you or a family member ever
11 worked for, had or have business dealings with, or owned
12 stock in any of these companies or organizations?

13 Question 5. I will now read a list of
14 individuals who might appear as witnesses in this case,
15 and then ask if you know any of these individuals:

16 Douglas Schmidt, Jerry Hausman, Jon Weissman,
17 James Malackowski, Thomas McBride, Robert Filepp, Heather
18 Hinton, Arun Iyengar, Michele Baumgartner-Bonanno, Brian
19 Turner, Phil Dunham, Jim Breen, Jason Carlisle, Paul Davis,
20 Jan Krems, Aileen Sandridge, Damien Schmitz, Varun Sood.

21 So Question 5 is: Do you know any of these
22 individuals that might appear as witnesses in this case?

23 Question 6. Have you, a relative or close
24 friend had any experience with patents, patent law, patented
25 technology, trade secrets or the United States Patent and

1 Trademark Office?

2 Question 7. Have you ever been involved in the
3 development of a new product or process?

4 Question 8. Do you have any strong feelings
5 about awarding damages or choosing not to award damages in a
6 case like this?

7 Question 9. Do you have an opinion about
8 whether software or online processes should be patented?

9 Question 10. Do you frequently use a computer
10 or mobile device for purchasing goods or services?

11 Question 11. Do you regularly use Groupon
12 either on a computer or mobile device?

13 Question 12. Look around the other potential
14 jury members. Do you know any of the others or have you had
15 any relationship with any of the other jurors before today?

16 Question 13. If you are selected to sit on this
17 case, is there any reason you could not render a verdict
18 solely on the evidence presented at the trial and in the
19 context of the law as given to you in my instructions in
20 reaching your verdict and disregard any other ideas, notions
21 or beliefs about the law that you may have?

22 Question 14. Do you have any special disability
23 or problem that would make it difficult or impossible for
24 you to serve as a member of the jury?

25 Question 15. On most days, jurors will be

1 expected to sit from 9:00 in the morning until 4:30 in the
2 afternoon. There will be a lunch break and at least a
3 fifteen minute break in the morning and afternoon. The
4 trial is expected to last ten days, so we expect to be done
5 by Friday, July 27th.

6 Does this schedule present any special hardship
7 for you?

8 And finally, question 16. Do you know of any
9 other matter which you believe should be called to the
10 Court's attention or which you think may prevent you from
11 rendering a fair and impartial verdict based solely upon the
12 evidence and my instructions as to the law?

13 So that completes the sixteen voir dire
14 questions. As I indicated, I and some of the lawyers will
15 now move to my jury room and please wait here and when
16 called to do so, if you have a yes answer, you'll come back
17 and meet with us in the jury room.

18 Thank you.

19 (A brief recess was taken.)

20 THE COURT: So before we bring the jurors in,
21 first off, we'll have time to talk before we get the
22 openings, so if there are issues, they're all preserved,
23 don't worry about that.

24 Thank you for identifying last week, I think it
25 was late in the week I think it was thirteen potential

1 jurors that you all agreed should be stricken, we let you
2 know and we let them know that they are stricken. Mr. Looby
3 will put their numbers on the record in a moment and there
4 is also I believe nine additional folks who have not shown
5 up.

6 MR. HADDEN: There is one we saw on the
7 questionnaire this morning that we would agree to strike,
8 number 48, who loss a father recently.

9 THE COURT: Do you agree with 48 being stricken
10 as well?

11 MR. DESMARAIS: I do, Your Honor.

12 THE COURT: We will add 48 to your list. I just
13 also wanted to note if you haven't figured out already,
14 there are a lot of interns in the building. One is seated
15 to my left. As I understand it, a number of them want to
16 see jury selection, so they'll be rotating in through our
17 time here in the jury room. All right? Any questions
18 before we get started?

19 MR. DESMARAIS: No, Your Honor.

20 MR. HADDEN: No, Your Honor.

21 THE COURT: Can you tell us who is not here,
22 Mr. Looby.

23 THE CLERK: This includes the 13 from Friday.
24 No. 2, No. 14, No. 15, No. 16, 17, 18, 22, 25, 26, 27, 28,
25 30, 31, 33, 38, 41, 47, 48, 50, 53, 56, 57, and 59.

1 THE COURT: Okay. Bring the first person in,
2 please.

3 (Juror entered the jury room.)

4 Good morning.

5 A JUROR: Good morning.

6 THE COURT: Please join us. Have a seat. There
7 is a lot of us here. Could you tell us if you recall your
8 juror number?

9 A JUROR: 12.

10 THE COURT: The number given to you this
11 morning. 12. Thank you. Are you Ashley Dougall.

12 A JUROR: Dougall.

13 THE COURT: Do you remember anything that you
14 answered yes to?

15 A JUROR: Yes, to buying electronics, buying
16 online, as well as yes to possibly schedule issues.

17 THE COURT: All right. Let's talk about the
18 potential hardship first with the schedule.

19 A JUROR: Okay.

20 THE COURT: Give us an idea what the issue is.

21 A JUROR: I do have two jobs. I work at
22 Discover and CVS as a pharmacy technician. Like in the
23 morning I'm usually 8:00 to 2:00, and at CVS 5:00 to 9:00.
24 That would be the only thing.

25 THE COURT: As you heard, if your on the jury,

1 you will be expected to be here 9:00 to 4:30 most days this
2 week and next week. That would seem to interfere at least
3 with the Discover job.

4 A JUROR: Yeah. And then I take the bus. That
5 would be the only thing. If I didn't, I would be fine.

6 THE COURT: So just give me an idea of the
7 hardship, we said you're not going to be able to do the
8 Discover job the next few weeks. You would be able to get
9 to your CVS job.

10 A JUROR: As long as the buses were able to get
11 me there just because I have to be there by 5:00. I rely on
12 public transportation, that would be the only thing.

13 THE COURT: How far is the CVS location from
14 here?

15 A JUROR: It's in Newark. The buses take about
16 thirty minutes depending, just depends on traffic.

17 THE COURT: If I said we were going to finish at
18 say 4 o'clock, are you pretty comfortable that an hour would
19 give you enough time to get there?

20 A JUROR: Yeah.

21 THE COURT: Tell us when your buying online, is
22 that a pretty regular practice?

23 A JUROR: Yes, on Amazon sometimes every couple
24 of months kind of thing.

25 THE COURT: Not something you do every week,

1 though?

2 A JUROR: No, too many bills.

3 THE COURT: Any other issues or anything you
4 said yes to?

5 A JUROR: No. I mean, I have had used Groupon
6 once or twice, for like Dunkin Donuts, but that was about
7 it.

8 THE COURT: Was that recently?

9 A JUROR: No, years ago.

10 THE COURT: Let me see if anyone else has any
11 questions.

12 Any questions?

13 MR. DESMARAIS: No, Your Honor.

14 MR. HADDEN: Just a couple. I understand you
15 used Groupon. Did you have any problems?

16 A JUROR: Only once, it was just like it had
17 said I redeemed like a Dunkin Donuts gift card, but it was
18 like five bucks. It was okay.

19 MR. HADDEN: They thought you redeemed it and
20 you didn't redeem it?

21 A JUROR: Yes. It was all right. It worked the
22 other time.

23 MR. HADDEN: And I think Judge Stark is going to
24 instruct the jury not to use Groupon during the trial.
25 Would that be a problem?

1 A JUROR: No.

2 MR. HADDEN: Thank you.

3 THE COURT: You can go back in the courtroom.

4 Thank you very much.

5 A JUROR: Thank you.

6 THE COURT: Any motion?

7 MR. DESMARAIS: No, Your Honor.

8 THE COURT: Any motion?

9 MR. HADDEN: No.

10 THE CLERK: Next.

11 (Juror entered the jury room.)

12 THE COURT: Good morning. You can have a seat
13 here and tell us your juror number.

14 A JUROR: I'm number 46.

15 THE COURT: I can check that for you. So you
16 should be Martha Sosangelis?

17 A JUROR: Yes.

18 THE COURT: Do you recall anything you answered
19 yes to?

20 A JUROR: Yes. My issue is a hardship. My
21 husband is in stage renal failure. He goes to dialysis
22 three times a week and I'm basically his sole caretaker. So
23 it's just when I heard the length of ten days, it's going to
24 be an issue.

25 THE COURT: Right, that would be he would miss

1 some of his appointments?

2 A JUROR: Yes. I'm the one who is taking him --
3 I don't have to take him to dialysis, but I have to drive
4 him other places and that sort of thing.

5 THE COURT: And it would be difficult to arrange
6 for someone else to do that?

7 A JUROR: Yeah.

8 THE COURT: Were there other things you answered
9 yes to?

10 A JUROR: No.

11 THE COURT: No.

12 Any questions?

13 MR. DESMARAIS: No, Your Honor.

14 THE COURT: Any questions?

15 MR. HADDEN: No, Your Honor.

16 THE COURT: You can go back in the courtroom.

17 A JUROR: Thank you.

18 (Juror left jury room.)

19 THE COURT: Any objection to striking her for
20 the hardship?

21 MR. DESMARAIS: No, Your Honor.

22 MR. HADDEN: No, Your Honor.

23 THE COURT: Okay. I'll strike Juror No. 46.

24 (Juror comes into jury room.)

25 A JUROR: Good morning.

1 THE COURT: Can you tell us your juror number
2 please.

3 A JUROR: 7.

4 THE COURT: Are you Stacie Cataldi?

5 A JUROR: I am.

6 THE COURT: Do you recall what you answered yes
7 to?

8 A JUROR: That I used my cellular device to buy
9 in purchasing. I have used Groupon to purchase a few
10 different things, so that should be it.

11 THE COURT: Let's talk just a little bit about
12 those.

13 A JUROR: Sure.

14 THE COURT: How often do you buy things online
15 with either a mobile device or a desktop?

16 A JUROR: I can't believe it is that often. I
17 will say I used it just this past weekend. We were in
18 Tennessee.

19 THE COURT: No one told you not to.

20 A JUROR: Yes, there was a Titanic museum type
21 deal to get in a little cheaper.

22 THE COURT: So that was with Groupon?

23 A JUROR: That was with Groupon.

24 THE COURT: So how often would you say you use
25 Groupon?

1 A JUROR: I probably only used it about three
2 times truly, and it has been for like deals to do things
3 with the family.

4 THE COURT: Right.

5 A JUROR: Bowling, things like that.

6 THE COURT: Do you have any strong feelings
7 positive or negative about Groupon?

8 A JUROR: No, I haven't had any issues. But I,
9 you know ...

10 THE COURT: If you are on the jury and I tell
11 you that you can't use Groupon for the length of trial,
12 would that be a hardship for you?

13 A JUROR: No.

14 THE COURT: Okay.

15 A JUROR: It's not like I use it daily or weekly
16 either. I can't even say I use it monthly, just once in a
17 while when I run across something that I know we're going to
18 do that it works out.

19 THE COURT: Okay. Anything else that you
20 remember saying "yes" to?

21 A JUROR: No. My only other thing, I am
22 downstate. I live downstate. I do have two younger kids
23 that are involved in camp. We have appointments, you
24 things, not that I can't try to rearrange things.

25 I do have a dental class that I was supposed to

1 take on the 26th that my boss has already paid for and
2 registered me for in Rehoboth.

3 THE COURT: That would be right near the end of
4 what we expect to have the trial for.

5 A JUROR: Right. I know you said until the
6 27th, so I'd said "hmm."

7 THE COURT: Is that during the daytime at class?

8 A JUROR: Yes.

9 THE COURT: Is there going to be any problem for
10 you at work if you are with us and you don't make it to that
11 class?

12 A JUROR: No, I don't think so. I know he will
13 be disappointed because the whole office is supposed to go.

14 THE COURT: Okay. And in terms of the
15 downstate, I don't know if you would find this helpful or
16 not. But you could -- we could put you up in a hotel.

17 A JUROR: She did say that when we were in the
18 jury room, yes. So that possibly would help if I was
19 chosen.

20 THE COURT: Right. Okay. Is there anything
21 else?

22 A JUROR: No, nothing else.

23 THE COURT: Any questions?

24 MR. DESMARAIS: I do have one question.

25 THE COURT: Go ahead.

1 MR. DESMARAIS: You said your boss might about
2 disappointed if you didn't go to the class. Would you be
3 disappointed if you didn't go?

4 A JUROR: It's OSHA. I mean, I mean it's one of
5 those like we haven't gone to a class and we were going to
6 have kind of a work group thing because it was down at the
7 beach afterwards, so the class was in the morning. We were
8 going to stay until about noon and then be able to kind of
9 do something as an office together.

10 We are a small office. There are only ten of
11 us including the doctor so it has been hard. He did write
12 a letter trying to get me out of this because it does put
13 patients behind. There are certain things that as dental
14 assistant I do and there are things that the other girls
15 don't tend to do. We've only got three dental assistants
16 including myself, so, that's -- yeah, but it was nice. So
17 that's okay. They know. They understand.

18 MR. DESMARAIS: Thank you.

19 THE WITNESS: Okay.

20 THE COURT: Any questions?

21 MR. HADDEN: No.

22 THE COURT: Okay. You can go back.

23 A JUROR: Thank you very much.

24 THE COURT: Thank you.

25 (Juror left jury room.)

1 THE COURT: Any motion?

2 MR. DESMARAIS: No, Your Honor.

3 THE COURT: Any motion?

4 MR. HADDEN: No, Your Honor.

5 (Juror comes into jury room.)

6 THE COURT: Good morning. You can have a seat,
7 please.

8 Do you know your juror number?

9 A JUROR: 32.

10 THE COURT: Thank you. Are you Carol Overdorf?

11 A JUROR: I am.

12 THE COURT: Do you recall anything you answered
13 yes to?

14 A JUROR: Yes. It was the 14th, 15th question.
15 The hardship.

16 THE COURT: The hardship.

17 A JUROR: Yes.

18 THE COURT: Tell me.

19 A JUROR: My crew is dedicated to getting me
20 back to work. I'm only three days ahead. No. 2, I have a
21 job interview on Friday for another job. And, 3, my 89 year
22 old mother moved in with me. I can't leave her alone.

23 THE COURT: So in terms of your work, you are at
24 a tree company, is that right?

25 A JUROR: Yes.

1 THE COURT: And you are the one?

2 A JUROR: Yes, I do the work. I do the
3 proposals and all that.

4 THE COURT: If you don't do that, then the whole
5 process falls apart.

6 A JUROR: (Nodding yes.)

7 THE COURT: Just for his benefit, that is a
8 "yes?"

9 A JUROR: Yes. Okay.

10 THE COURT: He is trying to take down what you
11 are saying?

12 A JUROR: Okay.

13 THE COURT: And then you are looking for another
14 job?

15 A JUROR: Yes, I am.

16 THE COURT: In addition of that one.

17 A JUROR: Instead of this one. This one is
18 driving me crazy.

19 THE COURT: I see. And you don't want to have
20 to reschedule an interview for a job.

21 A JUROR: It's actually my second interview.

22 THE COURT: And it was your mother you said?

23 A JUROR: Uh-huh.

24 THE COURT: You're normally taking care of her.

25 A JUROR: I check in on her several times a day.

1 I am worried because I called and she didn't answer the
2 phone.

3 THE COURT: I'm sorry about that. You are in
4 Ellendale?

5 A JUROR: Yes, 80 miles from here.

6 THE COURT: So if you were here, I think you
7 would be pretty distracted and worried about those other
8 issues?

9 A JUROR: (Nodding yes.)

10 THE COURT: That is a yes?

11 A JUROR: Yes. Yes. I'm sorry.

12 THE COURT: Thanks. I'm going to have you go
13 back into the courtroom.

14 A JUROR: Thank you.

15 THE COURT: Thank you.

16 (Juror left jury room.)

17 THE COURT: We'll strike 32 for cause.

18 Any objection?

19 MR. DESMARAIS: No.

20 MR. HADDEN: No.

21 THE COURT: We'll strike 32 for cause.

22 (Juror entered jury room.)

23 THE COURT: Have a seat.

24 Do you know what your juror number is?

25 A JUROR: 24.

1 THE COURT: Thank you. Are you Ms. Korzeniowsky?

2 A JUROR: Korzeniowsky, yes.

3 THE COURT: Korzeniowsky. My apologies. Do your
4 do you recall what you answered "yes" to?

5 A JUROR: Yes. The fact that today I have a
6 good friend who passed away and --

7 THE COURT: I'm sorry.

8 A JUROR: -- the funeral is today. And service
9 starts at 12:00. So I didn't ...

10 THE COURT: Okay.

11 A JUROR: I was hoping to do that, but ...

12 THE COURT: Right. That is here in Wilmington
13 or ...

14 A JUROR: No, it's off Kirkwood Highway or not
15 Kirkwood Highway. It's Betty Munson.

16 THE COURT: Okay.

17 A JUROR: I'm trying to think of ...

18 THE COURT: I'm very sorry to hear that. And I
19 don't want this to sound insensitive, but if you go to the
20 funeral today, do you have a hardship over the next nine
21 days or is it just a today issue?

22 A JUROR: Well, it's just really a today issue.
23 And I'm not comfortable with settings like this but ... I'm
24 nervous right now.

25 THE COURT: I'm sorry about that.

1 A JUROR: Yes.

2 THE COURT: Were there other issues that you
3 wanted to share with us?

4 A JUROR: No.

5 THE COURT: No. All right. Any questions?

6 MR. DESMARAIS: No, Your Honor.

7 THE COURT: Any questions?

8 MR. HADDEN: No, Your Honor.

9 THE COURT: Okay. You can go back into the
10 courtroom.

11 A JUROR: Okay. Thank you.

12 (Juror left jury room.)

13 THE COURT: What do you think we should do with
14 Juror No. 24?

15 MR. DESMARAIS: I would let her go to the
16 funeral, Your Honor.

17 THE COURT: Excuse her so she can go to the
18 funeral?

19 MR. DESMARAIS: I would.

20 THE COURT: Any objection to that?

21 MR. HADDEN: No.

22 THE COURT: Okay. So I am going to strike 24.
23 We don't normally let people go, but under these
24 circumstances, if you could work with Liz and see if there
25 is some subtle way to let her know she can leave. I don't

1 want others to leave.

2 MR. HADDEN: They're headed for the doors.

3 THE COURT: Right.

4 THE LAW CLERK: I can talk to Liz.

5 THE COURT: Right. I want to keep this going.

6 MR. DESMARAIS: We're going to get down to 14
7 pretty quickly.

8 (Juror comes into the jury room.)

9 THE COURT: Good morning.

10 A JUROR: Good morning.

11 THE COURT: Could you tell us your juror number,
12 please?

13 A JUROR: 19.

14 THE COURT: 19. So you are Frank Hartsell?

15 A JUROR: That's correct.

16 THE COURT: Do you recall what you answered
17 "yes" to?

18 A JUROR: I did. My concern is the length of
19 time of the trial simply because I work for a small company
20 and it would be a financial burden to both myself and family
21 and the company and a disservice to my customers simply
22 because I wouldn't be able to respond to their calls at
23 the present time. This is our busiest time of the year.
24 Wintertime would be a much more preferable time for us. I
25 can maneuver that. This would be tough.

1 THE COURT: You do pest control?

2 A JUROR: Yes, I do. Yes.

3 THE COURT: So things are better pest-wise in
4 the cold?

5 A JUROR: Very, very busy now, and the majority
6 of our customers are female. And when they call and you
7 tell them you can't get there for just a couple days, there
8 is a real panic on the other end of the phone. It's a
9 psychological problem with a lot of people. To me it's an
10 insect, but to them it's the end of the world. So that's my
11 concern.

12 I would like to say that I take responsibility,
13 my civic responsibility very seriously and I'm planning on
14 retiring in a couple years and at that time I could stay a
15 month if you needed me.

16 THE COURT: Right. So would it be a financial
17 hardship to you? Would you get paid or not paid?

18 A JUROR: No, I do not get paid. I get paid for
19 what I do, and there would be no income there for myself or
20 the company.

21 THE COURT: And in terms of servicing the
22 customers, how many others like you does the company have?

23 A JUROR: The owner and myself. I have been
24 with them for 47 years.

25 THE COURT: And he can't do the all of work

1 himself?

2 A JUROR: He is 81 years old, and at the present
3 time I do the majority of the work.

4 THE COURT: All right. Is there anything else?

5 A JUROR: No. Everything else I could -- I
6 could go with everything else except for this was my
7 concern. If it was a day trial ...

8 THE COURT: Right.

9 A JUROR: If you said 9:00 o'clock tonight, I
10 would still be here.

11 THE COURT: Okay. Any questions?

12 MR. DESMARAIS: No, Your Honor.

13 THE COURT: Any questions?

14 MR. HADDEN: Just one question.

15 A JUROR: Yes, sir.

16 MR. HADDEN: On your questionnaire you mentioned
17 your wife was a witness in a medical malpractice.

18 A JUROR: Yes. My wife retired recently as an
19 RN, and it was a malpractice case she was involved in. I
20 can't even tell you how many years ago it was. I don't
21 remember that.

22 MR. HADDEN: And she was, she was just a
23 witness?

24 A JUROR: Just a witness, I believe. I can't
25 remember if it was for the defense or the prosecution. I

1 can't remember that.

2 MR. HADDEN: Thank you. That was all the
3 questions.

4 A JUROR: Thank you.

5 THE COURT: You can go back into the courtroom.

6 A JUROR: Thank you.

7 THE COURT: Thank you very much.

8 (Juror left jury room.)

9 THE COURT: I think I probably need to strike 19
10 due to the hardship, but any objection to that from IBM?

11 MR. DESMARAIS: I guess not, Your Honor.

12 THE COURT: Any objection?

13 MR. HADDEN: No, Your Honor.

14 MR. DESMARAIS: It's a close call.

15 THE COURT: It's a close call but with no
16 objection I'm going to strike No. 19.

17 (Juror comes into jury room.)

18 THE COURT: Good morning. You can have a seat
19 there, please.

20 A JUROR: Good morning.

21 THE COURT: Do you know your juror number?

22 A JUROR: 43.

23 THE COURT: 43. Are you Wilhemina Silva?

24 A JUROR: Yes, I am.

25 THE COURT: Okay. Do you recall what you

1 answered "yes" to?

2 A JUROR: Basically, are you able -- the very
3 last question.

4 THE COURT: Okay. You have some concern about
5 being on this jury?

6 A JUROR: Right. Not about the jury itself but
7 my disability.

8 THE COURT: Oh.

9 A JUROR: I have issues sitting, standing. I'm
10 a disabled veteran. And my husband has to bring me up here
11 because I don't drive. I had to talk off from work to do
12 that. I'm a little concerned about that. I have sciatica.

13 THE COURT: Sorry to hear that.

14 So there are a couple of things there.

15 First, in terms of your husband having to take
16 time off from work and drive you back and forth, if it
17 were helpful, we could put you in a hotel up there.

18 A JUROR: That would be an accommodation.

19 THE COURT: That would help?

20 A JUROR: Uh-huh.

21 THE COURT: That part at least.

22 A JUROR: Uh-huh.

23 THE COURT: In terms of the sitting, there is a
24 lot of sitting involved. I announced we do take a break
25 regularly every hour and-a-half, two hours. We can take

1 breaks more frequently and sometimes we have to do that.

2 A JUROR: That is going to hold you all up.

3 THE COURT: What is that?

4 A JUROR: That is going to hold you up.

5 THE COURT: No, we have the time to do that.

6 A JUROR: Okay.

7 THE COURT: But I do need to have a sense as to
8 how long you think you could sit comfortably without having
9 to get up and move around. Is an hour too much to do that?

10 A JUROR: No, I can sit for an hour.

11 THE COURT: Sit for an hour.

12 A JUROR: I have to get up and move around and I
13 can sit again. It just tingles.

14 THE COURT: Now, if we took a break every hour
15 but it was bothering you and you needed more breaks, we're
16 fine doing that as long as you raise your hand or let us
17 know you need a break. Are you comfortable? Would you be
18 able to get our attention and let us know if you need a
19 break?

20 A JUROR: I can do that. I hate making waves.

21 THE COURT: Right. We don't want you to sit
22 there suffering.

23 A JUROR: Right.

24 THE COURT: All right. Well, if we're able to
25 do that at what I have just said, how concerned are you with

1 whether you could serve on this jury?

2 A JUROR: I don't have any problems serving on
3 the jury. I think the concentration, I'm more concerned
4 about my husband having to take me and my disability. I
5 don't know how much I can, what percentage of it I can
6 really give to what you want me to do. Because if I'm
7 hurting, then it takes away from what I can do for you.

8 THE COURT: Right.

9 A JUROR: Basically. But I can other than that.

10 THE COURT: Well, if we got started with you,
11 would you feel comfortable is letting us know if the pain is
12 too much and lot not able to concentrate?

13 A JUROR: I could do that. But the
14 transportation ...

15 THE COURT: Right, but that we could address
16 with a hotel.

17 A JUROR: Right.

18 THE COURT: Okay. Any questions for you?

19 MR. DESMARAIS: No, Your Honor.

20 THE COURT: Any questions?

21 MR. HADDEN: No, Your Honor.

22 THE COURT: All right. You can go back into the
23 courtroom.

24 A JUROR: Thank you.

25 (Juror left jury room.)

1 THE COURT: Any motion?

2 MR. DESMARAIS: No, Your Honor.

3 THE COURT: Any motion?

4 MR. HADDEN: No, Your Honor.

5 THE COURT: Okay.

6 (Juror entered courtroom.)

7 THE COURT: Good morning.

8 A JUROR: Good morning.

9 THE COURT: Have a seat.

10 Tell us your juror number, please.

11 A JUROR: I'm Juror No. 21.

12 THE COURT: Are you Lisa Holland?

13 A JUROR: I am sir.

14 THE COURT: Do you recall what you answered
15 "yes" to?

16 A JUROR: I do. You asked if we use our
17 cellphone to purchase, and I use Amazon.

18 THE COURT: About how often would you say you
19 buy things on Amazon?

20 A JUROR: Maybe every two weeks.

21 THE COURT: Have you ever used Groupon?

22 A JUROR: No.

23 THE COURT: Do you have any feelings positively
24 or negatively about Groupon?

25 A JUROR: None.

1 THE COURT: Okay. About how long ago would you
2 say was your last purchase on Amazon?

3 A JUROR: I purchased a car part over the weekend.

4 THE COURT: All right. Were there any other
5 questions that you answered "yes" to?

6 A JUROR: No.

7 THE COURT: No. Okay. Any questions?

8 MR. DESMARAIS: No, Your Honor.

9 THE COURT: Any questions?

10 MR. HADDEN: No, Your Honor.

11 THE COURT: Okay. You can go back in.

12 A JUROR: Thank you, sir.

13 (Juror left jury room.)

14 THE COURT: Any motion?

15 MR. DESMARAIS: No, Your Honor.

16 THE COURT: Any motion?

17 MR. HADDEN: No.

18 (Juror comes into jury room.)

19 THE COURT: Good morning. Have a seat. Tell us
20 your juror number.

21 A JUROR: 44.

22 THE COURT: Thank you. Are you John Simmons?

23 A JUROR: I am indeed.

24 THE COURT: Do you recall anything you answered
25 yes to?

1 A JUROR: Yes. About five of the questions.

2 THE COURT: In whatever order.

3 A JUROR: One is I worked with DuPont for
4 thirty-four years as a research chemist and I have over
5 twenty-five U.S. and European patents, so I have been
6 heavily involved in patent work, so I definitely have strong
7 opinions about that because it's property.

8 Obviously I have owned stock in IBM. I don't
9 know if I still do. I have to check my portfolio and talk
10 to my financial people, but I'm not sure about that. I know
11 of two employees at IBM, one I dated in college who has done
12 relatively well at IBM, a woman named Emily McCabe, and the
13 other is my wife's daughter's -- my wife's daughter, just
14 got married, her husband's mother worked for IBM.

15 I'm trying to think of some of the other
16 questions. As I said, I have strong opinions about patents.

17 THE COURT: Why don't we talk about some of the
18 things you mentioned and if you think of the other ones, you
19 can let us know. So you have about twenty-five patents?

20 A JUROR: Yes.

21 THE COURT: Very broadly, what type of area are
22 they in?

23 A JUROR: All over the chemical industry, gas
24 separation, high temperature polymers for engineering parts
25 mostly.

1 THE COURT: Have any of those patents to your
2 knowledge been litigated?

3 A JUROR: I don't think so, no.

4 THE COURT: Do you know whether DuPont practices
5 any of those patents?

6 A JUROR: I know Air Lockheed because I was on
7 loan to them, practices one. One is practiced by DuPont,
8 yes.

9 THE COURT: Now, you suggest you have strong
10 opinions about the patent system. Why don't you give us a
11 brief sense of what they are.

12 A JUROR: Well, I do believe the patent system
13 is there to protect corporations and they need to be strong,
14 strong defense of big corporations to protect the
15 intellectual interest because we have seen many times,
16 especially DuPont is one of the examples, Benlate, not
17 Benlate, one of the crop protection things we had arguments
18 with a South Korean company over who owned all of these
19 things, so that got litigated for years and it cost the
20 company a lot of money. So I believe there are certain
21 feelings that make me believe that you need to protect your
22 intellectual property.

23 THE COURT: So if you were on this jury and
24 learned that this case involved one side alleging that the
25 other side infringes its patents, do you think the

1 patentholder would start out a little bit ahead in your
2 mind?

3 A JUROR: Probably, because of the way I have
4 dealt with patents and how they were used. I mean, I would
5 have to look at the patent, but normally, in the chemical
6 industry it's pretty cut and dry, you can look and see what
7 the claims are, you get a good idea of what's valid and what
8 isn't. I don't know enough about these patents to know
9 whether I can look into it and make a quick decision, but
10 normally it's pretty cut and dried.

11 THE COURT: If you were on the jury and one of
12 the issues you heard was are these patents valid and you
13 were going to be asked to determine the validity of the
14 patents, do you think you could follow the law that I tell
15 you and base your decision on the testimony and evidence you
16 have heard in this trial?

17 A JUROR: Probably, yes.

18 THE COURT: All right. Now, you may as we sit
19 here own IBM stock, you don't know; is that right?

20 A JUROR: I would have to check. I know I have
21 owned it in the past. I don't know if we still own it.

22 THE COURT: Is that check something that's a
23 quick phone call?

24 A JUROR: I can call my stock broker to check
25 that.

1 THE COURT: You're pretty sure you don't own a
2 lot of it?

3 A JUROR: No, no, we have a diversified
4 portfolio. It's family money and things like that through a
5 different trust.

6 THE COURT: Do you have strong feelings about
7 IBM?

8 A JUROR: Negatively or positively, no.

9 THE COURT: Did you choose to buy IBM stock or
10 you leave the decision in the hands of somebody else?

11 A JUROR: These were not my decisions, they were
12 done by financial people.

13 THE COURT: And you mentioned people at IBM that
14 you have relationships with or had relationships with?

15 A JUROR: Yes.

16 THE COURT: Does any of that give you a feeling
17 that you're going to treat IBM as starting ahead or behind
18 perhaps in this case?

19 A JUROR: It wouldn't make me start behind, but
20 I don't know about ahead. It's hard to know. I don't have
21 negative feelings about anything.

22 THE COURT: Have you ever heard of Groupon?

23 A JUROR: Yes, I have.

24 THE COURT: Have you ever used Groupon?

25 A JUROR: I have not used it, but I spend a lot

1 of time on the internet and I obviously used all these
2 things.

3 THE COURT: Do you have any feelings about
4 Groupon?

5 A JUROR: No.

6 THE COURT: Do you have any feelings about
7 patenting certain software or computer science or internet
8 programs?

9 A JUROR: Some of it, yes, obviously I believe
10 software should be patentable.

11 THE COURT: You do believe it should be?

12 A JUROR: And protected, highly. I play a lot
13 of computer games, I understand the pirating and things that
14 go along with that. Yes, you need to protect intellectual
15 property.

16 THE COURT: Anything else you answered yes to
17 that you wanted to share with us?

18 A JUROR: I think that was it. Those are the
19 main ones.

20 THE COURT: Let me see if anyone else here has
21 questions for you.

22 MR. DESMARAIS: Just one general question. It
23 sounds like, you know, based on your answers that you
24 believe even though you have these things that you talked
25 about that you could be fair and impartial and judge this

1 case based on the facts and the evidence and the law as the
2 Judge gives it to you. Is that a fair conclusion?

3 A JUROR: Yeah.

4 MR. DESMARAIS: That's what I thought you said.
5 I just want to make sure that was clear.

6 Nothing else.

7 THE COURT: Any questions?

8 MR. HADDEN: Sure. As Groupon is the accused
9 infringer in this case, do you think they should be
10 concerned given your strong views about patent and
11 viewpoints about patents?

12 A JUROR: I don't know. I would have to read or
13 hear the patents and what was involved.

14 MR. HADDEN: Without knowing the specifics of
15 the patents, just knowing that Groupon is being accused of
16 infringement by IBM, is that -- should Groupon be concerned?

17 A JUROR: I don't know. I mean, I can't make
18 that decision based on -- I'm a trained scientist, so
19 empirically I would say no, I wouldn't be concerned, but I
20 would have to look into what was going on and what
21 happened --

22 MR. HADDEN: Okay.

23 A JUROR: -- from a scientific standpoint.

24 MR. DAY: Your Honor, in the interest of full
25 disclosure, Mr. Simmons and I were in a fantasy baseball

1 league together for a long time. It's been a while, but...

2 THE COURT: Do you recognize Mr. Day?

3 A JUROR: Now I do, yes. He had hair back then.
4 That was over twenty years ago.

5 THE COURT: Well, knowing that Mr. Day is
6 sitting right in the middle of the table so you may not know
7 which side he's on, but you would find out if you were on
8 the jury, do you think his side would end up getting your
9 sympathy or maybe not?

10 A JUROR: I don't know. I have no negative
11 feelings toward him if that's what you mean. I don't know,
12 to be honest.

13 THE COURT: If you're on the jury, you'll be
14 instructed you have to be fair and impartial and decide this
15 case based on the evidence and the law. Do you think you
16 could follow that instruction?

17 A JUROR: Yes.

18 THE COURT: Okay. Thank you. Anything else?
19 You can go back in the jury room.

20 A JUROR: Thank you.

21 THE COURT: Any motion from IBM?

22 MR. DESMARAIS: No, Your Honor.

23 THE COURT: Any motion from Groupon?

24 MR. HADDEN: Yes, dismiss for cause, IBM
25 connections, his obviously strong view that we're behind, he

1 said something along the lines of we would be behind at the
2 start or something.

3 THE COURT: I don't remember him saying that.

4 MR. DESMARAIS: In fact he said just the
5 opposite at the end. He doesn't even know if he has IBM
6 stock. I don't see how that's going to corrupt his
7 independence.

8 MS. SHAMILOV: His first answer was that they
9 probably would be behind and he backtracked a little bit,
10 but the very first thing he said I believe that was
11 probably, he would view infringement as behind, probably,
12 and then he backtracked a little bit later.

13 THE COURT: Anything else?

14 MR. HADDEN: That and what he said in his
15 questionnaire which is --

16 THE COURT: I don't have that in front of me so
17 put on the record what he said.

18 MR. HADDEN: He said that patents are important,
19 they protect intellectual property, vital to tech and
20 science companies.

21 THE COURT: Does that constitute cause in your
22 view?

23 MR. HADDEN: No, but I think that combined with
24 his past response and what he said about infringers being
25 behind from the start, and his connections to IBM, I think

1 it's enough --

2 THE COURT: You would oppose?

3 MR. DESMARAIS: I would totally oppose that. I
4 would think everyone on the jury thinks patents are a good
5 thing. It's in our constitution. The question isn't
6 whether patents are good things, it's whether patents are
7 infringed and he was asked two or three times could you
8 judge that question fairly and impartially and he said yes.

9 THE COURT: I'm going to deny the motion and
10 overrule the objection. My strong feeling from him was he
11 doesn't know whether these patents are valid, he doesn't
12 know whether these patents should have been issued, he
13 doesn't know whether the defendant infringes because he
14 hasn't seen any of the evidence and yes, he has experience
15 with patents, he has opinions about patents. He seemed very
16 familiar with the idea that patents can be invalid which is
17 not something that every juror walking will know. So what I
18 took from all that is he's going to follow my instructions
19 and decide things based on the evidence and the law, so the
20 motion is denied.

21 Bring in the next one.

22 (Juror entered the jury room.)

23 THE COURT: Good morning. You can have a seat,
24 please. Tell us your juror number.

25 A JUROR: 40.

1 THE COURT: 40. You are Alsi Sayadin?

2 A JUROR: Yes.

3 THE COURT: Do you recall anything you answered
4 yes to?

5 A JUROR: Yes, shopping online and on purchase
6 Groupon.

7 THE COURT: Okay. About how often would you say
8 you shop online.

9 A JUROR: Most -- a lot, actually.

10 THE COURT: Most days, actually?

11 A JUROR: No, once every week.

12 THE COURT: About how regularly would you say
13 you have used Groupon?

14 A JUROR: Just once in a while.

15 THE COURT: Once in a while.

16 A JUROR: Just one time actually.

17 THE COURT: Just one time.

18 A JUROR: Just one.

19 THE COURT: Do you remember about when that was?

20 A JUROR: I can't say, maybe two years ago.

21 THE COURT: Did you feel like you had a positive
22 or a negative experience or anything?

23 A JUROR: Nothing.

24 THE COURT: No strong feelings?

25 A JUROR: No.

1 THE COURT: If I were to tell you if you're on
2 the jury you can't use Groupon for the next couple of weeks
3 while you're here with us, would that be a problem?

4 A JUROR: Not at all.

5 THE COURT: Anything else you answered yes to?

6 A JUROR: No.

7 THE COURT: Any questions?

8 MR. DESMARAIS: No, Your Honor.

9 THE COURT: Any questions?

10 MR. HADDEN: No.

11 THE COURT: Okay. Thank you.

12 Any motions?

13 MR. DESMARAIS: No.

14 THE COURT: Any motion?

15 MR. HADDEN: No.

16 (Juror entered the jury room.)

17 THE COURT: Good morning.

18 A JUROR: Good morning.

19 THE COURT: Have a seat and tell us your juror
20 number, please.

21 A JUROR: 60.

22 THE COURT: 60. So you are Kristin Wright?

23 A JUROR: Yes.

24 THE COURT: And do you recall what you answered
25 yes to?

1 A JUROR: I work at Pepper Hamilton, so although
2 I'm not familiar with any of the attorneys here from Potter
3 or Ashby, I am familiar with people at your firm. I have
4 also -- I work in the commercial litigation department and I
5 have worked on many patent infringement cases. And I do
6 online shopping.

7 THE COURT: And you do online shopping?

8 A JUROR: Yes.

9 THE COURT: Let's talk about these things a
10 little bit. You are a legal assistant; is that right?

11 A JUROR: Yes.

12 THE COURT: And is part of your work trial
13 related?

14 A JUROR: It can be, yes.

15 THE COURT: Have you spent time in this
16 courthouse?

17 A JUROR: No. Uh-uh. Trial prep.

18 THE COURT: Trial prep?

19 A JUROR: Yes.

20 THE COURT: Not in the courthouse, for better or
21 for worse?

22 A JUROR: No.

23 THE COURT: You've heard of, of course, and are
24 familiar with the two Delaware firms involved?

25 A JUROR: Yes.

1 THE COURT: Potter Anderson and Ashby & Geddes.
2 Do you have strong feelings about either of them or are you
3 going to hold anything for or against either of those two
4 firms?

5 A JUROR: No.

6 THE COURT: Some of your work involves patent
7 litigation?

8 A JUROR: It has, yes. I worked with an
9 attorney that did mostly patent infringement litigation. He
10 has since retired and we might get a couple of cases here
11 and there.

12 THE COURT: Do you have any strong feelings
13 about patents or patent litigation or patent lawyers?

14 A JUROR: No, I don't.

15 THE COURT: Okay. And in terms of your online
16 shopping, just roughly, how frequently?

17 A JUROR: It's mostly what I do my shopping on,
18 online shopping. Although I don't use Groupon. I may have
19 once used Groupon. It's just for convenience, online
20 shopping. I have a small child, so it's easier for me.

21 THE COURT: Sure. The Groupon, do you have
22 strong feelings about Groupon?

23 A JUROR: No, the one time I used it, it was
24 easy, and I had no issues with it. But, yeah.

25 THE COURT: All right. And again, if I said you

1 can't use Groupon for the next couple of weeks while you're
2 with us, that would be okay?

3 A JUROR: Yeah that would be fine.

4 THE COURT: Anything else?

5 A JUROR: No.

6 THE COURT: We'll see if the lawyers have
7 questions for you. The lawyers never have questions. Any
8 questions?

9 MR. DESMARAIS: Yes, just one or two. Did any
10 of your patent cases that you worked on actually go to
11 trial?

12 A JUROR: Yes.

13 MR. DESMARAIS: And did that experience, do you
14 think that will affect you one way or the other on giving
15 the parties in this case an open mind?

16 A JUROR: No.

17 MR. DESMARAIS: Just had one patent trial?

18 A JUROR: No, there were several.

19 MR. DESMARAIS: Where were they, what courts in
20 Delaware?

21 A JUROR: Here in Delaware.

22 MR. DESMARAIS: With Judge Stark?

23 A JUROR: No, Judge Andrews.

24 THE COURT: Anything else?

25 MR. DESMARAIS: No.

1 THE COURT: Any questions?

2 MR. HADDEN: The patent cases, the one that went
3 to trial, was your firm representing the plaintiff or the
4 defendant?

5 A JUROR: The plaintiff.

6 THE COURT: Anything else?

7 MR. HADDEN: No.

8 THE COURT: You can go back in the courtroom.
9 Thank you.

10 A JUROR: Thank you.

11 THE COURT: Any motions?

12 MR. DESMARAIS: No.

13 THE COURT: Any motions?

14 MR. HADDEN: No.

15 (Juror entered the jury room.)

16 THE COURT: Good morning. Please have a seat.
17 And tell us your juror number.

18 A JUROR: 54.

19 THE COURT: Are you Linda Tumulty?

20 A JUROR: I am.

21 THE COURT: Do you recall anything you answered
22 yes to?

23 A JUROR: Selfishly the first thing is I'm
24 supposed to go on vacation starting Friday for a week. So
25 that was my main one concern, personally. I do have a

1 business relationship with IBM, but it's more, I work for
2 the insurance company that is their carrier for their
3 property and casualty and marine. I don't know if that
4 would affect anything. If they were the defendant it might
5 be different.

6 And then the third thing was the online shopping
7 question. I'm quite well aware, it's prime day today at
8 three o'clock, so I do quite a bit of online shopping.

9 THE COURT: Let's talk about each of those a
10 little bit. So the vacation that's supposed to start
11 Friday, where is that and have you already paid money for it
12 that you can't get back?

13 A JUROR: It's in Rehoboth Beach and yes, it's
14 not just that, it's the fact that I have family that also
15 took off for that week, so it would be kind of an
16 inconvenience for more than just myself.

17 THE COURT: And the business you do with IBM,
18 you're at Chubb; is that right?

19 A JUROR: Yes.

20 THE COURT: As long as there is a plaintiff
21 here, which I can tell you there is a plaintiff, you don't
22 think there could be any adverse impact on the job or your
23 job or anything?

24 A JUROR: I wouldn't foresee that.

25 THE COURT: Do you have any strong feelings

1 about IBM?

2 A JUROR: I mean, I have feelings just because
3 they're one of our bigger clients, you know.

4 THE COURT: Do you personally deal with IBM?

5 A JUROR: Yes, mostly they're a captive company,
6 WTC insurance company.

7 THE COURT: That's an HTO of IBM?

8 A JUROR: Right.

9 THE COURT: And then happy prime day, I guess.
10 How regularly would you say on the internet shopping?

11 A JUROR: Quite a lot. Five days a week, maybe.

12 THE COURT: And do you use Groupon?

13 A JUROR: I have received Groupon. I haven't
14 personally ever obtained a Groupon deal. But like I have
15 gotten the gifts that were with the Groupon.

16 THE COURT: Do you have any feelings about
17 Groupon?

18 A JUROR: Not really.

19 THE COURT: All right. Any questions?

20 MR. DESMARAIS: No, Your Honor.

21 THE COURT: Any questions?

22 MR. HADDEN: No, Your Honor.

23 THE COURT: You can go back in the courtroom.

24 A JUROR: Thank you.

25 THE COURT: I certainly would prefer not to take

1 her vacation away that she's prepaid for. Normally that
2 gets you out of jury duty. I think we're going to have
3 enough numbers, but any concerns with me striking 54?

4 MR. DESMARAIS: No, Your Honor.

5 MR. HADDEN: No, Your Honor.

6 THE COURT: So we'll strike 54.

7 (Juror entered the jury room.)

8 THE COURT: Good morning.

9 A JUROR: Good morning.

10 THE COURT: You can have a seat and tell us your
11 juror number, please.

12 A JUROR: 55.

13 THE COURT: Are you Robert Urian?

14 A JUROR: Yes.

15 THE COURT: And do you recall anything you
16 answered yes to?

17 A JUROR: Well, one thing about I don't get
18 reimbursed for being off for court, so that would be about
19 1,500 for two weeks.

20 THE COURT: You would lose or not earn \$1,500?

21 A JUROR: Yes.

22 THE COURT: Give us a sense of what you do.

23 A JUROR: I'm an occupational safety and health
24 supervisor, consulting for Wor-Wic Community College.

25 THE COURT: They're not going to pay you if

1 you're not there?

2 A JUROR: No. I have the policy if you want to
3 see the policy.

4 THE COURT: No, I trust you, of course. Is
5 there any way you could make that up at some other time?

6 A JUROR: No. I work Monday Wednesday -- I'm
7 sorry, Monday, Tuesday, Wednesday, and that's what they
8 hired me to do. The rest is just, it probably conflicts
9 with my other job. I have three jobs.

10 THE COURT: Okay. With the one that you would
11 miss and not make the \$1,500 is the one at the community
12 college?

13 A JUROR: Yes.

14 THE COURT: And what hours would you normally
15 work on Monday, Tuesday, Wednesday?

16 A JUROR: 8:00 to 4:30.

17 THE COURT: And this is downstate; correct?

18 A JUROR: Yes. It's actually in Salisbury.

19 THE COURT: Okay. All right. So certainly that
20 would be a financial hardship to you if you didn't get to
21 earn that income. Were there other things that you wanted
22 to share with us?

23 A JUROR: Nope.

24 THE COURT: All right. Any questions?

25 MR. DESMARAIS: No, Your Honor.

1 THE COURT: Any questions?

2 MR. HADDEN: No, Your Honor.

3 THE COURT: You can go back in the courtroom.

4 (Juror left jury room.)

5 THE COURT: I think someone working three jobs,
6 \$1,500 is a real financial hardship.

7 Any objection to striking him?

8 MR. DESMARAIS: No, Your Honor.

9 MR. HADDEN: No, Your Honor.

10 THE COURT: All right. We'll strike 55.

11 (Juror comes into jury room.)

12 THE COURT: Good morning.

13 A JUROR: Good morning.

14 THE COURT: Have a seat. Tell us your juror
15 number, please.

16 A JUROR: 48, I believe. Yes, 48.

17 THE COURT: 48. Did you say 48?

18 A JUROR: 48, yes.

19 THE COURT: What is your name?

20 A JUROR: Starr.

21 THE COURT: Oh, Allan Starr. Okay.

22 And what do you recall you answered "yes" to?

23 A JUROR: It's also online buying. We use
24 Groupon. I see a lot of people coming through with that.

25 Another thing is my brother recently passed

1 away. I think it would be a hardship because I still have a
2 lot of to deal with. It was just over a week ago.

3 MR. HADDEN: We agreed to strike.

4 MR. DESMARAIS: Yes, we did.

5 THE COURT: All right. You are not going to be
6 serving on the jury but I do need you to sit in the
7 courtroom for the rest of this process.

8 A JUROR: Okay. I appreciate you guys ...

9 THE COURT: Sorry for your loss.

10 A JUROR: Thank you.

11 THE COURT: Thank you for coming back here.

12 A JUROR: Thank you.

13 (Juror left jury room.)

14 THE COURT: So we didn't communicate --

15 MR. DESMARAIS: We didn't tell him.

16 THE COURT: -- that he could go. So 48 is
17 stricken.

18 (Juror left jury room.)

19 THE COURT: Good morning.

20 A JUROR: Good morning.

21 THE COURT: Good morning.

22 A JUROR: A room full of attorneys.

23 THE COURT: Just a few. Yes.

24 Do you know what your juror number is?

25 A JUROR: 39. My age.

1 THE COURT: Beverley Sappington.

2 A JUROR: Yes.

3 THE COURT: You will love it when you get to 40.

4 A JUROR: So I hear. It will be awhile.

5 THE COURT: All right. Do you recall what you
6 answered "yes" to?

7 A JUROR: There were a couple of things.

8 Everybody bought something online so that one for sure.

9 The other thing is that I worked for 20 years at
10 AstraZeneca in the Legal Department. And of course patents
11 were, although I wasn't in a specific patent area, some of
12 my attorneys did have input on patent work.

13 And I'm currently the only admin at AAA
14 headquarters supporting the chief legal officer and four
15 assistant counsels, so being out for ten days would be a
16 little uncomfortable. You know, everybody has got jobs but
17 it would cause a little bit of a hardship.

18 So those are my answers.

19 THE COURT: All right. Thank you. Let's talk
20 about some of those as well.

21 A JUROR: Okay.

22 THE COURT: Your online shopping, would you say
23 it is a daily thing, a weekly thing?

24 A JUROR: Every other week or so. Amazon
25 usually, Wal-Mart.

1 THE COURT: Do you ever use Groupon?

2 A JUROR: I have not used Groupon. I have
3 looked at it, but I haven't ...

4 THE COURT: Do you have any feelings, positive
5 or negative, about Groupon from what you have seen?

6 A JUROR: No.

7 THE COURT: No. Okay. If I told you not to use
8 Groupon for the next couple of weeks if you are on the jury,
9 that would not be a hardship?

10 A JUROR: No.

11 THE COURT: At AstraZeneca, how long ago did you
12 leave?

13 A JUROR: 2016. March of 2016.

14 THE COURT: And you were not personally involved
15 in patents; is that right?

16 A JUROR: Not personally, no.

17 THE COURT: Okay. But some of the lawyers and,
18 of course, the company.

19 A JUROR: The work I would do for them.

20 THE COURT: Might relate to patents?

21 A JUROR: Uh-huh. Some, slightly.

22 THE COURT: Some. Were you there when any
23 patents that AstraZeneca owns were being litigated?

24 A JUROR: Uh-huh.

25 THE COURT: That's a "yes?" That's for the

1 court reporter's benefit.

2 A JUROR: Yes. I'm sorry.

3 THE COURT: Whatever you saw from your vantage
4 point, did that leave you with a positive or negative
5 feeling about patents and how they're litigated?

6 A JUROR: I just know the importance, you know,
7 of patents to the business, you know, has them. And, you
8 know, just that it's important protect them.

9 THE COURT: Okay. If you are on this jury, you
10 would hear a lot of legal instructions you are probably
11 familiar with, jury instructions, you will hear a lot of
12 instructions about the law that governs patents and how
13 they're issued and when they might be invalid. Do you think
14 you could follow and comply with the instructions I would
15 give you?

16 A JUROR: Yes.

17 THE COURT: Do you think you could be fair and
18 open minded to both sides in a patent case?

19 A JUROR: Yes.

20 THE COURT: Okay. Now let's talk about your
21 hardships. First off, would you personally be getting paid
22 if you are with us the next couple weeks?

23 A JUROR: As far as I know, I would be getting
24 paid.

25 THE COURT: So it's more a concern about the

1 work, right?

2 A JUROR: The work, and the person that backs me
3 up is on vacation. So the person he will use in my place
4 will, you know, do their best but it would leave a big gap.

5 THE COURT: And if you were with us this week
6 and next week, are you going to be so concerned about what
7 is going on back at the office that you won't be able to
8 give our case the attention that it needs?

9 A JUROR: I would hope not. I mean if I'm
10 selected, I would do my job here.

11 THE COURT: And if that happened and you get
12 back to the office two weeks from today, is it, is all that
13 work going to be waiting on the table for you?

14 A JUROR: Probably.

15 THE COURT: But you could get through it
16 eventually?

17 A JUROR: I would get through it eventually and
18 try to do something at night. Although I -- my main
19 attorney, the Chief Legal Officer is, I shouldn't state,
20 kind of stuck in the 70s. That secretaries can't work from
21 home, there is really nothing they can do from home, which
22 just so you know we can. My job is online, but anyway
23 that's his opinion.

24 MR. DESMARAIS: We're familiar.

25 A JUROR: He handwrites everything.

1 MR. DESMARAIS: Tell him to give us a call.

2 A JUROR: Okay.

3 THE COURT: Okay. Any others concerns you want
4 to share with us?

5 A JUROR: I don't think so. I think those are
6 the main ones.

7 THE COURT: Let's see if the lawyers have any
8 questions?

9 MR. DESMARAIS: No, Your Honor.

10 THE COURT: Any questions?

11 MR. HADDEN: No, Your Honor.

12 THE COURT: All right. You can go into the
13 courtroom.

14 A JUROR: Thank you.

15 THE COURT: Thank you.

16 (Juror left jury room.)

17 THE COURT: Any motion?

18 MR. DESMARAIS: No.

19 THE COURT: Any motion?

20 MR. HADDEN: No.

21 (Juror comes into jury room.)

22 THE COURT: Good morning. You can have a seat
23 and tell us your juror number, please.

24 A JUROR: No. 35.

25 THE COURT: 35. Are you John Phanthayoum?

1 A JUROR: Yes.

2 THE COURT: And I apologize if I got that wrong.

3 A JUROR: That's all right.

4 THE COURT: Do you recall what you answered
5 "yes" to?

6 A JUROR: Yes. I bought products from Groupon.

7 THE COURT: You used Groupon?

8 A JUROR: Yes, sir.

9 THE COURT: Do you regularly use Groupon?

10 A JUROR: Not so often.

11 THE COURT: About how often did you last use it?

12 A JUROR: The last time I used it was early or
13 late March.

14 THE COURT: Okay. And about how many times do
15 you think in your life you have used it? Just a couple?

16 A JUROR: Just like three or four times.

17 THE COURT: Any positive or negative feelings
18 about Groupon?

19 A JUROR: No, nothing bad.

20 THE COURT: If you are on this jury and you were
21 told you couldn't use Groupon during the time that you're on
22 the jury, would that be a problem?

23 A JUROR: No.

24 THE COURT: No. Okay. Were there other things
25 that you wanted to share with us?

1 A JUROR: No.

2 THE COURT: That was it?

3 A JUROR: Uh-huh.

4 THE COURT: Any questions?

5 MR. DESMARAIS: No, Your Honor.

6 THE COURT: Any questions?

7 MR. HADDEN: Just a couple.

8 In your questionnaire, you mentioned you or your
9 family member own a property preservation business, is that
10 right?

11 A JUROR: I owned a property preservation
12 business before, yes.

13 MR. HADDEN: Can you tell me what you did?

14 A JUROR: We managed foreclosed homes by the
15 bank. We had an LLC.

16 MR. HADDEN: And have you been in any, involved
17 in any lawsuits with respect to that business?

18 A JUROR: No, sir.

19 MR. HADDEN: That's all.

20 THE COURT: Thank you. You can go back.

21 A JUROR: Thank you.

22 (Juror comes into jury room.)

23 THE COURT: Any motion?

24 MR. DESMARAIS: No.

25 THE COURT: Any motion?

1 MR. HADDEN: No.

2 (Juror comes into jury room.)

3 THE COURT: Good morning. You can have a seat
4 here with us.

5 A JUROR: Good morning.

6 THE COURT: Do you know your juror number?

7 A JUROR: Which number?

8 THE COURT: It would be the two digit number.

9 A JUROR: No 3.

10 THE COURT: Are you Chandra Bell?

11 A JUROR: Yes, I am.

12 THE COURT: Do you recall what you answered
13 "yes" to?

14 A JUROR: I think you asked if anyone used
15 products for online purchasing.

16 THE COURT: Right. Do you do online purchasing?

17 A JUROR: Yes.

18 THE COURT: About how often would you say you do
19 that?

20 A JUROR: About two or three times a month.

21 THE COURT: Okay. And have you ever used
22 Groupon?

23 A JUROR: Oh, yes.

24 THE COURT: Yes.

25 A JUROR: Uh-huh. I think everybody has.

1 THE COURT: How often would you say you use
2 Groupon? Is it that same amount of time?

3 A JUROR: Not as often. Not as often.

4 THE COURT: Maybe once a month.

5 A JUROR: Maybe once a month I use Groupon.

6 THE COURT: Do you have any feelings, positive
7 or negative, about Groupon?

8 A JUROR: No. I love them.

9 THE COURT: You do love them?

10 A JUROR: Yes.

11 THE COURT: So if you were on this jury and
12 you heard that Groupon was the defendant and was accused of
13 violating somebody else's patent, do you think that you
14 could be fair and open minded and assess whether Groupon did
15 something maybe they shouldn't have or do you think because
16 you love Groupon, you might not believe that they did
17 something wrong?

18 A JUROR: No. I can, I would be able to be fair
19 about it. I don't think that would be a problem, would have
20 bearing on anything.

21 THE COURT: Okay. And if I told you, if you are
22 on the jury, that I don't want jurors to use Groupon during
23 the trial, would that be a problem for you?

24 A JUROR: No.

25 THE COURT: All right. Did you answer yes or

1 anything else that you remember?

2 A JUROR: I remember the length of time. Right
3 now, I do work for a temporary agency, and so it's -- I
4 wouldn't probably get paid if I had to be on a jury for ten
5 days. I can't really say what I would do because it is a
6 banker lockbox, and I signed a NDA, so they don't want us to
7 disclose what I do at the bank, but that is only thing.
8 Other than that, it shouldn't be a problem.

9 THE COURT: Do you know -- so the trial may last
10 all of this week and all of next week. Would you have been
11 planning to work for the temp agency over that time?

12 A JUROR: Yeah. I actually work a weekend
13 shift. I work Friday through Monday from 7:00 a.m. to 5:30
14 p.m. My off days are on Tuesday, Wednesday, and Thursday.

15 THE COURT: So are you missing work today?

16 A JUROR: Yeah.

17 THE COURT: Okay.

18 A JUROR: Uh-huh.

19 THE COURT: And you would miss Friday and
20 probably Monday and possibly the following Friday, so
21 possibly the next three days, right?

22 A JUROR: Uh-huh.

23 THE COURT: If you are not earning the income
24 you would have earned on those days, is that real hardship
25 for you?

1 A JUROR: Yes, because it's a temp agency, so
2 like you don't get paid if you are not there. I work for
3 that agency.

4 THE COURT: Is there anything else is you
5 answered "yes" to?

6 A JUROR: That would be it right now.

7 THE COURT: All right. Any questions?

8 MR. DESMARAIS: No, Your Honor.

9 THE COURT: Any questions?

10 MR. HADDEN: No, Your Honor.

11 THE COURT: All right. You can go back.

12 A JUROR: Thank you.

13 (Juror left jury room.)

14 THE COURT: What do you think?

15 MR. DESMARAIS: I think we should let her go.

16 THE COURT: Any objection?

17 MR. HADDEN: No, no objection.

18 THE COURT: We will let No. 3 go due to the
19 hardship.

20 (Juror comes into jury room.)

21 THE COURT: Good morning. You can have a seat,
22 please.

23 If you could tell us your juror number?

24 A JUROR: 4.

25 THE COURT: Is your name Don Bleasdale.

1 A JUROR: Bleasdell.

2 THE COURT: My apologies. Do you recall what
3 you answered "yes" to?

4 A JUROR: I was a Patent Examiner, and I do shop
5 on Groupon. I can't remember the third one.

6 THE COURT: Okay. If it comes to you, let me
7 know. But we'll talk about those couple.

8 So you were a Patent Examiner?

9 A JUROR: Yes.

10 THE COURT: What type of patents?

11 A JUROR: Mechanical.

12 THE COURT: Mechanical.

13 A JUROR: Yes.

14 THE COURT: About what time frame was that.

15 A JUROR: That was 2001 to 2003.

16 THE COURT: Okay. Did that experience give you
17 a strong feeling, positive or negative, about patents?

18 A JUROR: One of the most difficult jobs I ever
19 did in my life. Gosh, lawyers are determined.

20 THE COURT: So if you are on this jury, as you
21 may have heard from my little summary, you might be asked
22 whether the patent here not only is infringed but whether
23 it's invalid. You may hear certain evidence about the
24 prosecution of the patent. Do you think that you could
25 follow the law that you give you and decide those issues

1 based on the evidence?

2 A JUROR: Yes.

3 THE COURT: You do think so?

4 MR. HADDEN: Uh-huh.

5 THE COURT: Is that a "yes?"

6 MR. HADDEN: Yes. Sorry.

7 THE COURT: For the court reporter's benefit.

8 No problem. So since 2003, have you had any involvement
9 with patents?

10 A JUROR: I wrote a few for some folks, but
11 other than that, no.

12 THE COURT: And did those turn into issued
13 patents?

14 A JUROR: No, those didn't.

15 THE COURT: Do you know if any patents you
16 examined ever ended up being litigated? I don't know if
17 that is something you would keep track of.

18 A JUROR: No, I wouldn't. When I left, I left.

19 THE COURT: All right. Fair enough. In terms
20 of Groupon, about how often would you say you used it?

21 A JUROR: Last night.

22 THE COURT: Okay. Is it a pretty regular
23 website for you?

24 A JUROR: Yes, on my phone.

25 THE COURT: Okay.

1 A JUROR: I actually just got a message from
2 Groupon, so ...

3 THE COURT: Is that like a regular e-mail
4 telling about deals?

5 A JUROR: No, it is telling my package is on its
6 way.

7 THE COURT: I see. If you are on this jury and
8 we tell you not to use Groupon just during the time you are
9 on the trial, so say the next two weeks, would that be a
10 hardship for you?

11 A JUROR: No, that should be doable.

12 THE COURT: Do you have strong feelings about
13 Groupon as a company?

14 A JUROR: Good deals. Other than that, not
15 really, no.

16 THE COURT: So do you think that Groupon might
17 start out a little bit ahead in this trial in your mind?

18 A JUROR: No, I don't think so. I think I'll
19 just see what IBM is saying is the patent infringement and
20 just wait from there.

21 THE COURT: Okay. Did you think of anything
22 else you answered "yes" to or you wanted to respond to?

23 A JUROR: Can you ask the questions again.

24 THE COURT: Sure, if you'd like.

25 Have you heard anything about this case?

1 A JUROR: No.

2 THE COURT: Do you know the lawyers?

3 A JUROR: No.

4 THE COURT: Do you know any of the witnesses?

5 A JUROR: No.

6 THE COURT: Did you ever hear of Prodigy or
7 Trintex?

8 A JUROR: No.

9 THE COURT: No, okay.

10 A JUROR: It was something to do with
11 employment. Did I know about IBM? Did my employer ...

12 THE COURT: Have you had any business dealings
13 with any of those companies?

14 A JUROR: Me personally, no. But the company I
15 work for, they actually have business with IBM.

16 THE COURT: Okay. That's your current employer?

17 A JUROR: Yes.

18 THE COURT: And what is it, if you know.

19 A JUROR: CD Richard Ellis. So it's IFM, an IFM
20 program. It basically manage IBM's production sites. But
21 other than that, that's it.

22 THE COURT: Like manage the physical plant
23 facility?

24 A JUROR: Yes.

25 THE COURT: Do you personally work at IBM

1 facilities?

2 A JUROR: At Datacom probably two years ago. As
3 of two years ago, no.

4 THE COURT: So not the last two years?

5 A JUROR: No.

6 THE COURT: Did that experience or your
7 company's relationship with IBM, does it impact how you view
8 IBM?

9 A JUROR: No.

10 THE COURT: No.

11 A JUROR: No.

12 THE COURT: Do you think they would start out
13 ahead in the case in your mind?

14 A JUROR: The same as Groupon.

15 THE COURT: Okay.

16 A JUROR: Yes.

17 THE COURT: You could be a fair and impartial
18 juror?

19 A JUROR: Yes.

20 THE COURT: Is that it?

21 A JUROR: That was it.

22 THE COURT: Any questions?

23 MR. DESMARAIS: I do, yes.

24 So if you get selected and you are in a room
25 like this with the other jurors and you were deliberating,

1 don't you think it would be very difficult for you not to
2 share with the other jurors details about how the Patent
3 Office works and how the -- you have sort of specialized
4 knowledge about that process; right? And if the jurors are
5 debating whether these patents are valid or infringed,
6 don't you think you will want to share you views about your
7 experience in the Patent Office?

8 A JUROR: So, by my nature, I probably would
9 just sit back and listen. And then if I see it's going,
10 well, this is how the Patent Office goes, and they ask how
11 do I know? Because I'm a Patent Examiner. And I'll
12 basically tell them this is what -- when somebody says you
13 are infringing on their patent, this is what they're saying
14 is infringing on, which is the claims.

15 MR. DESMARAIS: Right.

16 A JUROR: Other than that, no.

17 MR. DESMARAIS: It would be hard not to do; is
18 that right? It's human nature.

19 A JUROR: Yeah.

20 MR. DESMARAIS: Okay. Nothing.

21 THE COURT: Nothing else?

22 MR. DESMARAIS: No.

23 THE COURT: Any questions?

24 MR. HADDEN: No.

25 THE COURT: Okay. You can go back into the

1 courtroom. Thank you very much.

2 A JUROR: Thank you.

3 (Juror left jury room.)

4 THE COURT: Any motion?

5 MR. DESMARAIS: I think he needs to be excused.

6 He has too much specific knowledge about how the Patent
7 Office works, and Groupon is charging these patents are
8 invalid and the Patent Office missed stuff, so I think it is
9 too dangerous.

10 THE COURT: What do you think?

11 MR. HADDEN: I disagree. I think what he said
12 was he would make it clear he would look at the claims,
13 which is right out of the patent video. He said he would be
14 fair and impartial.

15 MR. DESMARAIS: He also said he is --

16 THE COURT: Hold on.

17 MR. DESMARAIS: I'm sorry. I didn't mean to
18 speak over you.

19 THE COURT: If, in fact, he were to, during the
20 deliberations, reveal his experience in the Patent Office
21 and talk about his understanding how that process works,
22 would that be something -- obviously, we'll never know, but
23 would that be problematic from your view?

24 MR. HADDEN: Well, I don't see any occasion
25 where he would do that. So I think if he says he is

1 going to follow your instructions and what he gave was a
2 clarifying you have to look at the claims, I don't see the
3 issue.

4 THE COURT: I guess the question I have is if he
5 was going to say something that did not have an evidentiary
6 basis, it could be an example of what he did or just general
7 experience he had in the office, is that something I should
8 be concerned with? I don't know if we all have to guess
9 whether he would do it.

10 MR. HADDEN: Right.

11 THE COURT: But if I tell you I know he is going
12 to do it, is it a problem or not a problem?

13 MR. HADDEN: I don't think it's a problem. And
14 we have other people that talked to you who have patents
15 who certainly are going to talk about the process, or are
16 equally likely to. That this gentleman is going to talk
17 about the evidence.

18 MR. DESMARAIS: If I might be heard, Your Honor.

19 THE COURT: Yes.

20 MR. DESMARAIS: I directly asked him when you
21 are in the deliberations, are you going to share your
22 specialized knowledge about how this happens in the Patent
23 Office? And he directly said yes. And that won't be in
24 evidence.

25 THE COURT: Hold on. So I'm willing to assume

1 that he would, since it is human nature that that could
2 happen.

3 MR. DESMARAIS: Right.

4 THE COURT: I'm less sure on why it is a problem.

5 MR. DESMARAIS: It is a problem because the jury
6 in their deliberations isn't supposed to be relying on
7 anything other than what is in evidence in the trial and if
8 he starts sharing things about the Patent Office like Patent
9 Examiners make mistakes, it's very common. We don't look at
10 all the art. It is common patents are invalidated. Things
11 that won't be in the record.

12 THE COURT: Some of those will be, but not all.

13 MR. DESMARAIS: He has unique expertise to share
14 with the jury that is extra record, and it could be highly
15 prejudicial. So I don't know if it will be prejudicial to
16 him or Groupon because I don't know what he will say but he
17 said he is going to say it. We know he is going to say it.
18 And once he interjects into that deliberation room facts and
19 opinions that are not evidence that the lawyers didn't
20 elicit in direct or cross, that corrupts the process.

21 THE COURT: Is there anything else you want to
22 say?

23 MR. HADDEN: Well, it's the same issue we had
24 with Juror 44 who had the 25 patents. He said the patent is
25 the bedrock of our economy. He is going to put in his ideas

1 with his experience with those 25 patents and how important
2 they were to DuPont.

3 So I don't see any difference. All this
4 gentleman said is he will point the jurors to the claims,
5 which is what they should be doing anyway.

6 MR. DESMARAIS: I will point out one major
7 difference, which is coming from the Patent Office, he will
8 speak with authority which is a different thing than
9 somebody who got his own patent.

10 THE COURT: All right. I want to think about
11 this one a little bit more. So we'll put 4 off to the side
12 for the moment. I have under advisement IBM's motion to
13 strike.

14 (Juror comes into jury room.)

15 THE COURT: Good morning. Have a seat and tell
16 us your juror number, please.

17 A JUROR: 52.

18 (Juror entered the jury room.)

19 THE COURT: Good morning. Have a seat. Tell us
20 your juror number, please.

21 A JUROR: 52.

22 THE COURT: Are you Ms. Nicole Tingle?

23 A JUROR: I am.

24 THE COURT: Do you recall what you answered yes
25 to?

1 A JUROR: I do.

2 THE COURT: Okay. Let us know, please.

3 A JUROR: Sure. So I shop online probably every
4 day. And I have purchased on Groupon within the last year,
5 several times. I'm the business manager of a facility at
6 the beach and we are short staffed at this moment, so ten
7 days being away from this facility with twenty year olds
8 would cause a major hardship for the business, along with,
9 you know, the financial obligation as well.

10 THE COURT: Were there other things?

11 A JUROR: No, that's it. Those are the things.

12 THE COURT: Let's talk about those things, then.

13 A JUROR: Sure.

14 THE COURT: We'll go in reverse order. So you
15 are at the Factory Sports Complex; is that right?

16 A JUROR: Yes.

17 THE COURT: That's somewhere near the beach; is
18 that correct?

19 A JUROR: Yes, it's at the beach. It's an
20 indoor sports facility for the adults and children.

21 THE COURT: So I see you're the business
22 manager.

23 A JUROR: I am.

24 THE COURT: Part of your job is overseeing the
25 other folks working there?

1 A JUROR: The employees and the day-to-day
2 operations of the business.

3 THE COURT: And I'm sure this is the busiest
4 time of the year?

5 A JUROR: It is. We have summer camp going on
6 right now with thirty plus kids within the building.

7 THE COURT: Within the building?

8 A JUROR: Yes.

9 THE COURT: What would be -- what are you afraid
10 of is going to happen this week and next if you're not
11 there?

12 A JUROR: I don't know. You know, the second
13 graders might take over the twenty year olds in the
14 building. No, just the day-to-day operations that happen
15 could be a hardship. There is no one at this time to --
16 that's able to fulfill those responsibilities. The owners
17 are not in at the moment.

18 THE COURT: Can do you any of that remotely
19 during a break, or as you're driving up or back?

20 A JUROR: Probably not. I mean, it's physically
21 just laying eyes on what's going on with the staff. There
22 is five staff members in the building all under the age of
23 twenty-five, you know, with thirty kids.

24 THE COURT: If you are here, are you going to be
25 able to give the trial the attention it needs or are you --

1 is your mind going to be with the kids?

2 A JUROR: I'm going to be worried about what's
3 going on at the factory.

4 THE COURT: About how often would you say you
5 use Groupon?

6 A JUROR: I bought probably fifty percent of my
7 Christmas gifts for my family last year off of Groupon.
8 Usually during Christmas time is when we use Groupon.

9 THE COURT: If you are on our jury and I tell
10 you don't use Groupon while you're on the jury, so say for
11 the next two weeks, would that be a hardship for you?

12 A JUROR: No.

13 THE COURT: Your online shopping, that's a
14 pretty regular occurrence?

15 A JUROR: Yes, personal and through the
16 business.

17 THE COURT: Let me see if anyone else has
18 questions. Any questions?

19 MR. DESMARAIS: No, Your Honor.

20 THE COURT: Any questions?

21 MR. HADDEN: One question.

22 In your questionnaire, you mentioned you had at
23 least one bad experience with Groupon where you think
24 somebody was misleading. Did you say that?

25 A JUROR: Yes.

1 MR. HADDEN: When was that?

2 A JUROR: Probably over a year ago. I didn't
3 read the fine print. You know, the fine print.

4 MR. HADDEN: Have you used Groupon after that?

5 A JUROR: Yes, after reading the fine print.

6 MR. HADDEN: Thank you. And does your
7 experience with Groupon put it in a bad light your mind?

8 A JUROR: Uh-uh. No.

9 MR. HADDEN: Thank you.

10 A JUROR: You're welcome.

11 THE COURT: You can go back in the courtroom.
12 Thank you.

13 A JUROR: Thank you.

14 THE COURT: Any motion for IBM?

15 MR. DESMARAIS: Yeah. I mean, I think she's got
16 a long commute and she said already that she would be
17 distracted, so it seems to me that we don't need somebody
18 that's got a long commute that's going to be distracted.

19 THE COURT: Any objection?

20 MR. HADDEN: No objection.

21 THE COURT: We'll strike 52.

22 (Juror entered the jury room.)

23 THE COURT: Good morning. Have a seat and tell
24 us your juror number, please.

25 A JUROR: Nine.

1 THE COURT: Jaquetta Collins?

2 A JUROR: Yes.

3 THE COURT: Do you recall what you answered yes
4 to?

5 A JUROR: Shopping online.

6 THE COURT: About how often would you say you
7 shop online?

8 A JUROR: Pretty often.

9 THE COURT: Every week at least?

10 A JUROR: Not every week, no. I can't afford
11 that.

12 THE COURT: Maybe once a month?

13 A JUROR: Maybe once a month or once every few
14 months, yeah.

15 THE COURT: Is Groupon one of the sites you have
16 ever shopped on?

17 A JUROR: No.

18 THE COURT: Have you heard of Groupon?

19 A JUROR: I have heard of it, but I have never
20 used it.

21 THE COURT: You don't have any positive or
22 negative feelings about them, do you?

23 A JUROR: No.

24 THE COURT: Were there other things that you
25 answered yes to?

1 A JUROR: Uh-uh.

2 THE COURT: That's it?

3 A JUROR: That's it.

4 THE COURT: Any questions?

5 MR. DESMARAIS: No, Your Honor.

6 THE COURT: Any questions?

7 MR. HADDEN: No, Your Honor.

8 THE COURT: Okay. Thank you very much.

9 Any motions?

10 MR. DESMARAIS: No.

11 THE COURT: Any motions?

12 MR. HADDEN: No.

13 (Juror entered the jury room.)

14 THE COURT: Good morning. Have a seat. Tell us
15 your juror number, please.

16 A JUROR: 42, I think.

17 THE COURT: 42 is Nicole Shuba?

18 A JUROR: Yes.

19 THE COURT: Can you tell me if you recall what
20 you answered yes to.

21 A JUROR: There was a question about someone
22 working for IBM.

23 THE COURT: Okay.

24 A JUROR: My grandfather worked for them.

25 THE COURT: Did work for them?

1 A JUROR: Uh-huh.

2 THE COURT: Do you know what he did?

3 A JUROR: What he did?

4 THE COURT: Yes.

5 A JUROR: No.

6 THE COURT: Do you have strong positive or
7 negative feelings about IBM as a result of your
8 grandfather's relationship with them?

9 A JUROR: I mean, I know he liked them a lot.

10 THE COURT: Do you think in this trial that IBM
11 might start out a little bit ahead in your mind given that?

12 A JUROR: I don't know.

13 THE COURT: Do you think that you could be fair
14 and impartial to both sides in a case where IBM is one of
15 the parties?

16 A JUROR: Yeah, I guess.

17 THE COURT: Were there other things you answered
18 yes to?

19 A JUROR: The one if you've bought stuff online.

20 THE COURT: You do shop online occasionally at
21 least?

22 A JUROR: Yes, a lot.

23 THE COURT: A lot. About how often would you
24 say you're doing online shopping?

25 A JUROR: Probably like four times a week,

1 probably.

2 THE COURT: And is Groupon one of the sites that
3 you use?

4 A JUROR: Yes.

5 THE COURT: About how often would you say you
6 were using Groupon.

7 A JUROR: I don't necessarily always buy on
8 there, but I'm on there once a week looking because I have
9 the app.

10 THE COURT: So you can look at the deals that
11 are on there?

12 A JUROR: Yes.

13 THE COURT: You have bought, though, at some
14 point something on Groupon?

15 A JUROR: Uh-huh. Yes.

16 THE COURT: Do you have positive or negative
17 feelings about Groupon?

18 A JUROR: They've always -- I have gotten good
19 deals, so that's positive.

20 THE COURT: Do you think they may start out a
21 little bit ahead in a lawsuit with IBM?

22 A JUROR: I don't know.

23 THE COURT: You don't know. Okay. If I were to
24 tell you that if you're on this jury you can't use Groupon
25 for the next two weeks, would that be a problem?

1 A JUROR: No.

2 THE COURT: Okay. Other things that you
3 answered yes to?

4 A JUROR: No.

5 THE COURT: Okay. Let me see if the lawyers
6 have questions for you. Any questions?

7 MR. DESMARAIS: Just one. So you seem a little
8 hesitant on whether you think you could be fair and
9 impartial. What do you think is really going on with
10 respect to the case of IBM versus Groupon, do you feel like
11 you favor one side versus the other before we even start?

12 A JUROR: I don't know. I have always heard
13 about IBM, so it's like already in my mind, but like I don't
14 know about it. I just know that my grandfather worked for
15 them, that's why my dad and my uncle are in that field. So
16 I have positive things about them.

17 MR. DESMARAIS: But your experience with Groupon
18 is favorable, too?

19 A JUROR: Uh-huh.

20 MR. DESMARAIS: How do you feel about Groupon
21 going in without hearing anything about the case?

22 A JUROR: I just have positive things for both.

23 MR. DESMARAIS: Okay.

24 THE COURT: Anything else?

25 Any questions?

1 MR. HADDEN: Just a couple of questions. You
2 mentioned your dad and uncle were in the field. You said
3 your grandfather worked at IBM?

4 A JUROR: My dad and my uncle just work like in
5 computers and things like that.

6 MR. HADDEN: Okay. No further questions.

7 THE COURT: Nothing else. You can go back in
8 the courtroom. Thank you.

9 Any motions?

10 MR. DESMARAIS: No.

11 THE COURT: Any motions?

12 MR. HADDEN: No. I don't think we have a
13 questionnaire from her.

14 MR. DESMARAIS: No, we don't.

15 THE COURT: All right.

16 (Juror entered the jury room.)

17 THE COURT: Good morning.

18 A JUROR: Good morning.

19 THE COURT: You can have a seat.

20 A JUROR: Hello everyone.

21 THE COURT: Do you know your juror number?

22 A JUROR: Yeah, 23.

23 THE COURT: 23. So are you Donna Jones?

24 A JUROR: Yes, I am.

25 THE COURT: Do you recall what you answered yes

1 to?

2 A JUROR: Yeah, the Groupon, who hasn't used
3 Groupon. I'm not a regular user, though, sorry guys, I only
4 used it a couple of times.

5 THE COURT: A couple times. About how recently
6 would you say?

7 A JUROR: A couple of years ago.

8 THE COURT: Any strong positive or negative
9 feelings?

10 A JUROR: No.

11 THE COURT: If I said don't use Groupon over the
12 next couple of weeks, would that be okay with you?

13 A JUROR: That would be fine.

14 I used to work for attorneys. I don't know
15 these guys. It was thirty years ago.

16 THE COURT: Thirty years ago here in Wilmington?

17 A JUROR: Yes, Phillip and Synder, Spencer and
18 Goldman, they kind of split up and they have done different
19 things.

20 THE COURT: What did you do there?

21 A JUROR: I was in admin, but I worked in the
22 trademark area. I only did that for a year-and-a-half and
23 went with the Bank of America, MBNA.

24 THE COURT: Have you ever done anything with
25 patents?

1 A JUROR: No, just trademarks.

2 THE COURT: So you have heard of some of the
3 firms that I have mentioned; is that right?

4 A JUROR: Only Potter Anderson.

5 THE COURT: Only Potter Anderson.

6 A JUROR: Yeah, because they have been around a
7 lot of years, thirty years ago I remember.

8 THE COURT: Do you think the side that Potter is
9 on would start out ahead in your mind?

10 A JUROR: No. Oh, gosh no.

11 THE COURT: Would they start out behind?

12 A JUROR: No, even. Even, I'm pretty, yeah.

13 THE COURT: You think you could be fair and
14 impartial?

15 A JUROR: Absolutely.

16 THE COURT: Other things you answered yes or no?

17 A JUROR: No, that's it.

18 THE COURT: Any questions?

19 MR. DESMARAIS: No, Your Honor.

20 THE COURT: Any questions?

21 MR. HADDEN: No, Your Honor.

22 THE COURT: You can go back in the courtroom.

23 Any motions?

24 MR. DESMARAIS: No.

25 MR. HADDEN: No.

1 (Juror entered the jury room.)

2 THE COURT: Good morning. You can have a seat
3 and tell us your -- a lot of us. If you could tell us your
4 juror number, please.

5 A JUROR: Ten.

6 THE COURT: Just so we know who you are. Are
7 you Gail Cooke?

8 A JUROR: Yes.

9 THE COURT: Do you recall what you answered yes
10 to?

11 A JUROR: Well, a couple of them. One of them
12 was the products one, have I been involved in the
13 development of products where I work, and before in the
14 process with it, and also I worked at purchasing for a long
15 time and I dealt a lot with IBM and ordering all the
16 machines and computers and typewriters and the consumables
17 that went along with those where I worked. And also, my
18 brother-in-law has his own patent.

19 THE COURT: We're going to talk about all these
20 things. Were there others that you remember answering yes
21 to?

22 A JUROR: No, I think those were the three that
23 stood out.

24 THE COURT: Let's talk about those and if you
25 think of any others, let me know. The product development

1 that you have been involved in, is that with your current
2 employer?

3 A JUROR: Well, it's been with like all of them
4 along, DuPont and with Seamen's now.

5 THE COURT: Is it easy to describe to us
6 generally the type of products you have been part of
7 developing?

8 A JUROR: It's health care.

9 THE COURT: Health care.

10 A JUROR: Uh-huh.

11 THE COURT: And just generally what is your role
12 in the product development process?

13 A JUROR: Okay. Well, at the present time I
14 work in QA, so we are involved with actually the process of
15 how it flows from -- to the customer and through the
16 development of the testing and the manufacturing of the
17 product, and the correct paperwork and all of the things
18 that like the foreign ministry in Japan and the other
19 countries need as well as if they have the patents then
20 occasionally the other, with the regulatory, QA regulatory
21 department, they come back with us with list of things that
22 we have to make sure are on the products when they get sent
23 out. And you know, as far as copyright, things like that.

24 THE COURT: What does QA mean?

25 A JUROR: Quality assurance.

1 THE COURT: You mentioned patents. Do you
2 personally have any involvement with patents in the
3 development process?

4 A JUROR: Not directly, but indirectly, they're
5 in the other building, they're like in the process for the
6 consumables that we do. Not right away, but for the down
7 the line.

8 THE COURT: Do you have any feelings about
9 patents or the patent system?

10 A JUROR: No.

11 THE COURT: Do you know if any of the patents
12 related to any of the products that you worked with have
13 been litigated, any lawsuits?

14 A JUROR: I don't think so, but just when I
15 worked with DuPont there was those ones for back then, but I
16 don't think they involved me directly.

17 THE COURT: You haven't had to provide evidence
18 or documents or testimony for any of those?

19 A JUROR: No.

20 THE COURT: All right. In terms of being
21 responsible for making purchases from IBM, that was in a
22 prior job; is that right?

23 A JUROR: That's when I worked for DuPont, and
24 then Dade.

25 THE COURT: And about how long ago did that role

1 end, you helping purchase from IBM?

2 A JUROR: Maybe twenty-five years.

3 THE COURT: And it was like computers and
4 typewriters?

5 A JUROR: Yeah, I did all the ordering for the
6 site because I was purchasing coordinator then and handled
7 all of that.

8 THE COURT: No business interaction with IBM for
9 the last twenty plus years, would you say?

10 A JUROR: Well, just getting computers at home,
11 and you know, calculators and things like that online.

12 THE COURT: Do you have any general feeling
13 about IBM?

14 A JUROR: Other than I thought they were really
15 great. I guess no.

16 THE COURT: Do you think that in a case in which
17 they are a party they might start out a little bit ahead in
18 your mind?

19 A JUROR: Probably.

20 THE COURT: Probably, because of those positive
21 experiences?

22 A JUROR: Yeah. Yeah. I never had any bad
23 experiences with them in dealing with any of their services
24 or anything like that.

25 THE COURT: Is it possible that after hearing

1 the evidence and the law in this case you might think even
2 though they're a great company and I never had a bad
3 experience, maybe they're not right in this case?

4 A JUROR: I don't know how to answer that
5 because, you know, not seeing everything and know what's
6 really involved.

7 THE COURT: Let's talk about something else.
8 Your brother-in-law has a patent. Do you know what kind of
9 patent it is, what it relates to?

10 A JUROR: That's when he worked for DuPont and
11 then he got one of his own for something totally different,
12 it's like something with the -- he's a golfer.

13 THE COURT: Something related to golf?

14 A JUROR: Yeah, something like that.

15 THE COURT: Does he actually have the patent
16 now?

17 A JUROR: I think he still does, yeah.

18 THE COURT: And did he share with you any
19 feelings about the patent system or did you --

20 A JUROR: No.

21 THE COURT: And do you have any feelings about
22 it based on his experience?

23 A JUROR: No, other than I know it was a lengthy
24 process.

25 THE COURT: Do you know if he's ever sold any

1 products or made any money related to this patent?

2 A JUROR: I think he does. I think he sells
3 them himself. He didn't go out to like another company to
4 do it. He does it individually, but since he's passed away
5 now. So I don't know what my sister has done with it. I
6 have never questioned her about it.

7 THE COURT: All right. From the little bit I
8 have told you about the case, do you think you could be a
9 fair and impartial juror on it?

10 A JUROR: Well, it's hard to say.

11 THE COURT: Have you ever been on a jury before?

12 A JUROR: Yes, I have.

13 THE COURT: About how long ago was that?

14 A JUROR: Maybe eight, ten years.

15 THE COURT: Do you remember what kind of case it
16 was?

17 A JUROR: It was civil. And then I was chosen
18 for I think -- no, I was like on, like I am not for federal
19 and then I was not chosen.

20 THE COURT: So you know at least for one trial
21 what this is like?

22 A JUROR: Uh-huh.

23 THE COURT: You seem a little hesitant.

24 A JUROR: This is a bigger one than the other
25 ones I was on. So, you know --

1 THE COURT: But I assume you were able to be
2 fair and impartial in that smaller case; is that right?

3 A JUROR: Yeah, in the smaller case. A couple
4 of them were settled before we ever went. Yeah, I guess I
5 can, yeah, not lean one way or the other.

6 THE COURT: Did you think of anything else you
7 wanted to tell us?

8 A JUROR: No. Those are the only things that
9 stood out.

10 THE COURT: Let me see if anyone else here has
11 any questions for you. Any questions?

12 MR. DESMARAIS: No, Your Honor.

13 MR. HADDEN: No questions.

14 THE COURT: You can go back into the courtroom.
15 Thanks so much.

16 (Juror left jury room.)

17 THE COURT: Any motion?

18 MR. DESMARAIS: No, Your Honor.

19 THE COURT: Any motion?

20 MR. HADDEN: For cause. She said IBM stood out
21 in front. She couldn't decide against IBM. She hesitated
22 forever before she could say she was fair.

23 MR. DESMARAIS: I think at the very last
24 question you asked her, had she done this before, was she
25 fair, and could she be fair and impartial in this case? And

1 she said yes.

2 THE COURT: She said "I guess." But she was
3 very reluctant repeatedly. I'm concerned enough that I'm
4 going grant the motion to strike No. 10.

5 (Juror comes into jury room.)

6 THE COURT: Good morning.

7 A JUROR: Good morning.

8 THE COURT: Have a seat. Tell us your number,
9 please.

10 A JUROR: My phone number is --

11 THE COURT: No, not your phone number. Your
12 juror number.

13 A JUROR: Juror No. 34.

14 THE COURT: Are you of a Patricia Park?

15 A JUROR: Yes.

16 THE COURT: Do you recall what you answered
17 "yes" to?

18 A JUROR: I do know one of the other jurors.

19 THE COURT: You do?

20 A JUROR: I do.

21 THE COURT: Okay. You don't know his or her
22 juror number?

23 A JUROR: I do not know his number.

24 THE COURT: So how well do you know him or her?

25 A JUROR: We bowl together September through May

1 once a week on the same team -- on the same league. Not the
2 same team but the same league.

3 THE COURT: Have you seen him or her since May
4 when the season ended.

5 A JUROR: No.

6 THE COURT: Okay. Is he or she an arch-rival?
7 No?

8 A JUROR: Only when we're bowling.

9 THE COURT: Did you talk to him or her today?

10 A JUROR: Yes.

11 THE COURT: Just because you saw him?

12 A JUROR: Yes.

13 THE COURT: All right. That was it?

14 A JUROR: That was it.

15 THE COURT: Any questions?

16 MR. DESMARAIS: No.

17 THE COURT: Any questions?

18 MR. HADDEN: No.

19 THE COURT: Okay. You can go back into the
20 courtroom.

21 A JUROR: Okay.

22 (Juror left jury room.)

23 THE COURT: Any motion?

24 MR. DESMARAIS: No.

25 MR. HADDEN: No.

1 (Juror comes into jury room.)

2 THE COURT: Good morning. Have a seat, please.

3 A JUROR: Good morning.

4 THE COURT: Can you tell us your juror number.

5 A JUROR: No. 5.

6 THE COURT: Are you Christina Bonilla?

7 A JUROR: Yes.

8 THE COURT: And what did you answer "yes" to,
9 please?

10 A JUROR: Actually two questions.

11 THE COURT: Sure.

12 A JUROR: Whether I knew one of the other jurors
13 on my team. And I do, No. 36. His name is Allen Samuels.
14 We worked together at Girls Inc. a few years back.

15 And then the other one was something about
16 shopping online on a mobile app. I do that all the time.

17 THE COURT: All the time.

18 A JUROR: Yes. Yes.

19 THE COURT: So let's talk about both of those a
20 little bit.

21 Would you say you shop online everyday?

22 A JUROR: A few times a week.

23 THE COURT: A few times a week.

24 A JUROR: Uh-huh.

25 THE COURT: But with a mobile app and also like

1 on a desktop?

2 A JUROR: Yes, a desktop and through my phone,
3 mobile phone.

4 THE COURT: Is Groupon one of the sites you
5 would visit?

6 A JUROR: No. It's typically more retail
7 companies like Macy's, Old Navy, places like that.

8 THE COURT: Have you ever looked at Groupon?

9 A JUROR: You've looked at it but I've never
10 used any of there services before.

11 THE COURT: Do you have any strong feelings
12 about Groupon from either what you saw or just know?

13 A JUROR: Not strong feelings, just I know
14 they're -- I have an idea it did sounds like they're some
15 kind of a discount company where they promote offers. I
16 know my daughter used Groupon one time to get a membership
17 for my youngest son for karate membership in Hockessin. But
18 that's about it.

19 THE COURT: Okay. And in terms of this other
20 juror, you know Juror No. 36.

21 A JUROR: Uh-huh.

22 THE COURT: About how long ago did you work
23 together?

24 A JUROR: Probably over ten years ago.

25 THE COURT: Have you seen him since you stopped

1 working together?

2 A JUROR: No.

3 THE COURT: Did you talk today?

4 A JUROR: Yes. I actually went up to him and
5 said don't I know you? And it went from there. And I
6 figured we work together, so ...

7 THE COURT: Is there anything else you want to
8 share with us?

9 A JUROR: No, that's it.

10 THE COURT: Any questions?

11 MR. DESMARAIS: No.

12 A JUROR: Any questions?

13 MR. HADDEN: No.

14 THE COURT: Okay. You can go back. Thank you.

15 A JUROR: Uh-huh.

16 (Juror left jury room.)

17 THE COURT: Any motion?

18 MR. DESMARAIS: No.

19 THE COURT: Okay.

20 MR. HADDEN: No. But I think to correct the
21 record, I think Samuels is actually 37, not 36. I think she
22 might have gotten the number wrong.

23 THE COURT: I do see No. 37 is a Mr. Samuels.
24 She did say 36 but she also said Samuels. Thank you.

25 Okay.

1 (Juror comes into jury room.)

2 THE COURT: Good morning.

3 A JUROR: Good morning.

4 THE COURT: If you could have a seat.

5 A JUROR: Wow. Good morning, everybody.

6 THE COURT: There are a lot of us. Can you tell
7 us your juror number, please?

8 Just the one or two digit number from this
9 morning.

10 A JUROR: Oh. Is this what is on the inside of
11 the envelope?

12 THE COURT: Yes, you are No 1.

13 A JUROR: Wow.

14 THE COURT: You must be Richard Allen.

15 A JUROR: That's it.

16 THE COURT: Tell us what you know.

17 A JUROR: I have purchased things on the
18 Internet.

19 THE COURT: Okay.

20 A JUROR: I do know a Robert Phillips. I don't
21 know if you said Phillip or --

22 THE COURT: I meant to say Filepp with an F. Is
23 yours with an F?

24 A JUROR: No, with a P.

25 THE COURT: I know it was not clear from my

1 pronunciation.

2 A JUROR: The most important thing is I have
3 reservations next week for vacation.

4 THE COURT: Okay.

5 THE JURORS: Not paid for, but I mean I do have
6 reservations. I'm on vacation starting this Saturday.

7 THE COURT: Right.

8 A JUROR: So that would be my concern. And I
9 had let the Court know about this several weeks ago. I
10 never got a response though. If it was for the week, that
11 would be great, but ...

12 THE COURT: So you wouldn't lose any money. You
13 would lose your vacation.

14 A JUROR: Right. And I'd have to reschedule my
15 vacation.

16 THE COURT: Okay.

17 A JUROR: I would not lose money, honestly.

18 THE COURT: How much of hardship would it be if
19 you had to move your vacation back?

20 A JUROR: I don't know. I'd have to say it's
21 still, I would be able to take one. But before the summer
22 is over, I'm not sure about that.

23 THE COURT: Okay. And you're online shopping,
24 just give us a sense of how often you do that.

25 A JUROR: Not even once a month.

1 THE COURT: Okay.

2 A JUROR: Less than that.

3 THE COURT: Is Groupon one of the sites?

4 A JUROR: No.

5 THE COURT: Have you heard of Groupon?

6 A JUROR: Yes.

7 THE COURT: Do you have any feelings about that?

8 A JUROR: No. I don't know anything about them.

9 THE COURT: Had you heard of IBM?

10 A JUROR: Oh, absolutely. I've got computers.

11 THE COURT: Any feeling?

12 A JUROR: No.

13 THE COURT: All right. Is there anything

14 else --

15 A JUROR: No.

16 THE COURT: -- you want to share?

17 A JUROR: No.

18 THE COURT: Any questions?

19 MR. DESMARAIS: No, Your Honor.

20 THE COURT: Any questions?

21 MR. HADDEN: No, Your Honor.

22 THE COURT: All right. You can go back.

23 A JUROR: Thank you, sir.

24 Thank you.

25 (Juror left jury room.)

1 THE COURT: Any motion?

2 MR. DESMARAIS: No.

3 THE COURT: Any motion?

4 MR. HADDEN: No.

5 THE COURT: Okay.

6 MR. DESMARAIS: It's unfortunate, though.

7 (Juror comes into jury room.)

8 THE COURT: You can have a seat, please.

9 Do you know your juror number they gave you
10 today?

11 A JUROR: I believe it's 36. I can check.

12 THE COURT: I can check for you.

13 A JUROR: Yes, 36.

14 THE COURT: Joshua Robbins.

15 A JUROR: Yes.

16 THE COURT: Tell us, if you could, what you
17 answered "yes" to.

18 A JUROR: There was a few, and I don't remember
19 all of them.

20 THE COURT: Whatever you remember.

21 A JUROR: The main thing is I was trying to be
22 excused. I am a sole proprietor and my business, my
23 business, I deliver snacks to Ocean City.

24 THE COURT: Okay.

25 A JUROR: If I'm not there, I'm in breach of

1 contract.

2 THE COURT: Okay. Ocean City, Maryland?

3 A JUROR: Maryland.

4 THE COURT: This is a pretty busy time at Ocean
5 City, Maryland.

6 A JUROR: Yes, it is. And if I'm not there for
7 a week, I could easily not have a business anymore. That's
8 my only source of income.

9 And then it was kind of like hardship-type
10 questions I know you also asked.

11 THE COURT: Right.

12 A JUROR: I do shop online a lot.

13 There was a question that was have you ever
14 worked for a company that produces new products. Was that
15 it?

16 THE COURT: Yes, certain product development.

17 A JUROR: Yes. I interned in a product
18 development department for a company that produced textbooks
19 for schools.

20 I feel there was another.

21 THE COURT: That's okay. I take it the snack
22 delivery business in Ocean City is not big in the winter; is
23 that right?

24 A JUROR: It's not.

25 THE COURT: That would be a better time for you

1 to do this.

2 A JUROR: That would be much better.

3 THE COURT: Any questions?

4 MR. DESMARAIS: No, Your Honor.

5 THE COURT: Any questions?

6 MR. HADDEN: No, Your Honor.

7 THE COURT: You can go back into the courtroom.

8 A JUROR: Thank you.

9 (Juror left jury room.)

10 THE COURT: Any objection to striking 36 for the
11 hardship?

12 MR. DESMARAIS: No Your Honor.

13 MR. HADDEN: No, Your Honor.

14 THE COURT: We'll strike 36.

15 (Juror comes into jury room.)

16 THE COURT: Good morning.

17 A JUROR: Good morning.

18 THE COURT: You can have a seat right there.

19 What is your juror number, please?

20 A JUROR: 51.

21 THE COURT: Thank you. Are you John Sweetman?

22 A JUROR: That is correct.

23 THE COURT: And do you recall what you answered
24 "yes" to?

25 A JUROR: Yes. The design and development of

1 the product. I work for Siemens Healthcare. I work in the
2 support role, technical support person that helps out
3 engineers get done changes to machinery and also development
4 of machinery.

5 THE COURT: That's part of your ongoing job
6 responsibilities?

7 A JUROR: Correct. I've been doing that for
8 about 11 years.

9 THE COURT: Do you know if patents are part of
10 that development process?

11 A JUROR: It is part of that. I don't deal
12 directly with that, but I do deal with documentation that
13 patenting would do. And I would help that get processed
14 into an SPA program.

15 THE COURT: Do you, through that experience or
16 otherwise, have any strong feelings about patents?

17 A JUROR: No.

18 THE COURT: Have any of the patents you have
19 been indirectly involved with, have they ever ended up
20 lawsuits, do you know?

21 A JUROR: No, I'm relatively -- In R&D, it takes
22 five to ten years to develop something and I'm in my
23 eleventh year. So so far, in my time, I have seen no
24 lawsuits.

25 THE COURT: Other things you answered "yes" to?

1 A JUROR: Not anything pressing. I do have a
2 field trip with my son next week I'd like to go on that is
3 kind of special.

4 What really popped out is the whole thing with
5 dealing with the developmental product.

6 THE COURT: Right. Which day next week is the
7 field trip?

8 A JUROR: It's Tuesday.

9 THE COURT: And would you lose any money if you
10 are not able to do that?

11 A JUROR: No. I was going to take the day off
12 work.

13 THE COURT: Okay. Is there anything else?

14 A JUROR: No.

15 THE COURT: Any questions?

16 MR. DESMARAIS: No.

17 THE COURT: Any questions?

18 MR. HADDEN: Just one.

19 A JUROR: Sure.

20 MR. HADDEN: With the work you do in developing
21 products and dealing with patents, would IBM, being the
22 patent holder, be ahead of Groupon in your view in this
23 case?

24 A JUROR: No.

25 MR. HADDEN: Thank you.

1 THE COURT: Okay. You can go back into the
2 courtroom. Thank you.

3 A JUROR: Thank you very much.

4 (Juror left jury room.)

5 THE COURT: Any motion?

6 MR. DESMARAIS: No.

7 THE COURT: Any motion?

8 MR. HADDEN: No.

9 (Juror comes into jury room.)

10 THE COURT: Good morning.

11 A JUROR: Good morning.

12 THE COURT: You can have a seat. Tell us your
13 juror number.

14 A JUROR: 37.

15 THE COURT: 37. Allen Samuels, right?

16 A JUROR: Yes.

17 THE COURT: Do you recall what you answered
18 "yes" to?

19 A JUROR: I know someone on the jury.

20 THE COURT: Who do you know on the jury?

21 A JUROR: No. 5, Christine Bonilla.

22 THE COURT: How do you know her?

23 A JUROR: She used to work with me at Girls Inc.

24 THE COURT: About how long ago was that?

25 A JUROR: Over ten years ago.

1 THE COURT: Have you seen her since?

2 A JUROR: No, I haven't.

3 THE COURT: You talked to her today?

4 MR. HADDEN: Yes.

5 THE COURT: Is there anything else you answered
6 "yes" to?

7 MR. HADDEN: That was it.

8 THE COURT: Any questions?

9 MR. DESMARAIS: No.

10 THE COURT: Any questions?

11 MR. HADDEN: I just have one question.

12 In your questionnaire, you said your family
13 member owned a non-profit business?

14 A JUROR: Yes.

15 MR. HADDEN: Is that you?

16 A JUROR: That's me.

17 MR. HADDEN: What kind of business?

18 A JUROR: Inner city youth. It deals with inner
19 city youth, mentoring and prevention programs.

20 THE COURT: Is there anything else?

21 MR. HADDEN: No.

22 THE COURT: Thank you. You can go back into the
23 courtroom.

24 (Juror left jury room.)

25 THE COURT: Any motion?

1 MR. DESMARAIS: No.

2 MR. HADDEN: No.

3 (Juror comes into jury room.)

4 THE COURT: Good morning.

5 A JUROR: Hi.

6 THE COURT: Would you mind have having a seat
7 there? And tell us your juror number.

8 A JUROR: 45.

9 THE COURT: Thank you. You are Pamela Simon?

10 A JUROR: Yep.

11 THE COURT: Do you recall what you answered
12 "yes" to?

13 A JUROR: My brother is a lawyer and my
14 husband's best friend is a patent attorney. And my husband
15 bought from Groupon in the past, though I haven't seen any
16 transactions in the past couple of years. And I buy online.

17 THE COURT: Okay. Thank you. Let's talk about
18 each of those just a little bit.

19 So it is your brother I think is a lawyer?

20 A JUROR: Yes. Yes.

21 THE COURT: Do you know what kind of law he
22 does?

23 A JUROR: He work for Richards, Layton & Finger.

24 THE COURT: Here in Delaware?

25 A JUROR: Yes. Cottrell.

1 THE COURT: Fred Cottrell.

2 A JUROR: And he doesn't talk anything about
3 that, and I don't ask him any questions.

4 THE COURT: Do you know if he involved with
5 patent litigation?

6 A JUROR: I don't know.

7 THE COURT: You don't know. Okay.

8 A JUROR: I think he just does doctors, or -- I
9 don't know.

10 THE COURT: Okay. That's fine. But your
11 husband's best friend is a patent attorney; is that right?

12 A JUROR: Yes, in Salt Lake City.

13 THE COURT: In Salt Lake City. Okay. Do you
14 have any feelings about patent litigation?

15 A JUROR: No.

16 THE COURT: Any feelings about patents?

17 A JUROR: No.

18 THE COURT: Okay. Now, your husband uses
19 Groupon, not you, though, I guess?

20 A JUROR: No.

21 THE COURT: Okay. Do you'd have any feelings
22 about Groupon?

23 A JUROR: No.

24 THE COURT: Has your husband shared with you his
25 views on Groupon?

1 A JUROR: No.

2 THE COURT: No.

3 A JUROR: No.

4 THE COURT: You do do some shopping on Priceline
5 though, correct?

6 A JUROR: Uh-huh.

7 THE COURT: Just for the court reporter, that
8 was a "yes," right?

9 A JUROR: Yes. Sorry.

10 THE COURT: That's all right. About how often
11 would you say you are buying things online?

12 A JUROR: For myself personally, like about
13 every couple of months.

14 THE COURT: Okay.

15 A JUROR: And my husband buys me.

16 THE COURT: All right. Fair enough. Let me see
17 if anyone has any further questions. Any questions?

18 MR. DESMARAIS: No, Your Honor.

19 THE COURT: Any questions?

20 MR. HADDEN: Just one question, ma'am.

21 A JUROR: Yep.

22 MR. HADDEN: You wrote in your questionnaire
23 there are medical issues that would make it difficult for
24 you to pay attention in the trial?

25 A JUROR: If it were lasting beyond like a month

1 potentially. I had a stroke. I could get like tired in the
2 long run from waking up early, but I think like it's about a
3 month.

4 MR. HADDEN: Okay. Well, we will not make a
5 month.

6 THE COURT: Okay. Anything else?

7 MR. HADDEN: No.

8 THE COURT: All right. You can go back into the
9 courtroom.

10 A JUROR: Thank you.

11 THE COURT: Thank you very much.

12 (Juror left jury room.)

13 THE COURT: Any motion?

14 MR. DESMARAIS: No, Your Honor.

15 THE COURT: Any motion?

16 MR. HADDEN: No, Your Honor.

17 (Juror comes into jury room.)

18 THE COURT: Good morning.

19 A JUROR: Hello.

20 THE COURT: Have a seat right there. This one
21 here, near us. Thank you.

22 And do you know your juror number? Just the one
23 or two digit number.

24 A JUROR: It's either 6 or 9.

25 THE COURT: That's a good question. Are you

1 Reginald Butler?

2 A JUROR: Yes, it is. Which is it.

3 THE COURT: We should do something about that.
4 It's 6. I'm glad you pointed that out. We're going to do
5 something about that.

6 A JUROR: It's either 6 or 9.

7 THE COURT: Do you know what you answered "yes"
8 to?

9 A JUROR: Yes, I just know a juror. That's all.

10 THE COURT: Do you know his or her name or juror
11 number?

12 A JUROR: No. She is on my bowling league. We
13 bowl the winter league and she happened to hear my voice. I
14 turned around and knew her, and that's all it is.

15 THE COURT: Do you see her other than in
16 bowling?

17 A JUROR: No, just bowling.

18 THE COURT: When is the bowling league?

19 A JUROR: When does it happen?

20 THE COURT: Yes. Is it ongoing?

21 A JUROR: No, it's not ongoing. We just
22 finished up. It's a winter league.

23 THE COURT: All right. Anything else you
24 answered "yes" to?

25 A JUROR: That's it.

1 THE COURT: That's it.

2 Any questions.

3 MR. DESMARAIS: No.

4 THE COURT: Any questions?

5 MR. HADDEN: No.

6 THE COURT: Okay. Thank you.

7 A JUROR: All right.

8 (Juror left jury room.)

9 THE COURT: Any motion from IBM?

10 MR. DESMARAIS: No.

11 THE COURT: From Groupon?

12 MR. HADDEN: No.

13 (Juror comes into jury room.)

14 THE COURT: Good morning. You can have a seat
15 over there.

16 Do you know your juror number?

17 A JUROR: 11.

18 THE COURT: Are you Tamera Davis?

19 A JUROR: Uh-huh.

20 THE COURT: That is a "yes" for the court
21 reporter's benefit?

22 A JUROR: Yes.

23 THE COURT: He doesn't know how to spell the
24 other word. Do you know what you answered "yes" to?

25 A JUROR: The shopping online.

1 THE COURT: Okay.

2 A JUROR: And Groupon.

3 THE COURT: Okay.

4 A JUROR: I have the app.

5 THE COURT: On your phone?

6 A JUROR: Yes, I use it.

7 THE COURT: About how often would you say you
8 use Groupon?

9 A JUROR: Not that often.

10 THE COURT: Every month maybe?

11 A JUROR: Most likely, yes.

12 THE COURT: Okay. If you are on the jury and I
13 tell you don't use Groupon for the next two weeks, would
14 that be a problem?

15 A JUROR: No.

16 THE COURT: No. Okay. How often would you say
17 you shop online?

18 A JUROR: A lot.

19 THE COURT: A couple times a week at least?

20 A JUROR: Yes.

21 THE COURT: All right. Other things you
22 answered "yes" to?

23 A JUROR: No.

24 THE COURT: No, that's it.

25 Any questions?

1 MR. DESMARAIS: No.

2 THE COURT: Any questions?

3 MR. HADDEN: No.

4 THE COURT: Thank you. You can go back into the
5 courtroom.

6 (Juror left jury room.)

7 THE COURT: Any motion?

8 MR. DESMARAIS: No.

9 THE COURT: Any motion?

10 MR. HADDEN: No.

11 THE COURT: Okay.

12 (Juror comes into jury room.)

13 THE COURT: Good morning.

14 A JUROR: Good morning.

15 THE COURT: You can have a seat over here,
16 please, and join us at the table.

17 Do you know what your juror number is?

18 A JUROR: 20.

19 THE COURT: 20. Are you Kenneth Hilton?

20 A JUROR: Yes.

21 THE COURT: Do you recall what you answered
22 "yes" to?

23 A JUROR: I recall answering "yes" on
24 technology.

25 THE COURT: Okay.

1 A JUROR: And "yes" on answer to why I shouldn't
2 be, because of my knee, sitting for a long period of time.

3 THE COURT: So it would be a hardship for you to
4 have to sit through the trial for two weeks.

5 A JUROR: Yes.

6 THE COURT: We may be able to arrange to take a
7 break so you wouldn't sit more than an hour at a time.

8 A JUROR: That would be good.

9 THE COURT: That would be good if we took a
10 break every hour for a few minutes, though you would be here
11 from 9:00 to 430 probably for ten days.

12 A JUROR: Just as long as I don't have to sit in
13 one place for four hours.

14 THE COURT: No, no. It wouldn't be for four
15 hour. It could be one to two hours, but if you needed it to
16 be one hour?

17 A JUROR: I could deal with that.

18 THE COURT: One hour you could do. Okay. And
19 what about the technological experience or background did
20 you want to share with us?

21 A JUROR: Well, I work with CJ Reynolds and
22 Morgan Stanley on computers and they, as a company, they
23 deal with IBM computers.

24 THE COURT: You used IBM computers at those
25 companies?

1 A JUROR: Right.

2 THE COURT: What was your general responsibility
3 with those?

4 A JUROR: It was whether it was stolen software,
5 building a computer up, upgrading it.

6 THE COURT: And what was in sort of time frame
7 what was the most recent experience? How many years ago did
8 you stop doing that kind of work?

9 A JUROR: That's two months before the World
10 Trade incident.

11 THE COURT: Okay. So 2001?

12 A JUROR: Yeah.

13 THE COURT: Okay. And do you do much with
14 computers now?

15 A JUROR: Oh, yes. Still work on computers.

16 THE COURT: For your own?

17 A JUROR: At home.

18 THE COURT: At home.

19 A JUROR: Right.

20 THE COURT: Do you have any feelings about IBM?

21 A JUROR: No.

22 THE COURT: No. All right. Other things you
23 wanted to tell us?

24 A JUROR: No that's it.

25 THE COURT: That's it. Let me see if anyone

1 else has any questions?

2 MR. DESMARAIS: No, Your Honor.

3 THE COURT: Any questions?

4 MR. HADDEN: No, Your Honor.

5 THE COURT: All right. You can go back.

6 A JUROR: All right.

7 THE COURT: Thank you very much.

8 (Juror left jury room.)

9 THE COURT: Any motion for Juror 20?

10 MR. DESMARAIS: No.

11 MR. HADDEN: No.

12 THE COURT: We're going to check on how many
13 more we may need.

14 THE CLERK: Three.

15 THE COURT: Three left.

16 Let's take a very short break and we'll bring
17 the last three in. There are two restrooms here. Feel free
18 to use them if you want. I'll come back in about five
19 minutes.

20 (A brief recess was taken.)

21 THE COURT: All right. We have only three left.
22 We'll bring one in.

23 (Juror entered the jury room.)

24 THE COURT: Have a seat there and tell us your
25 juror number, please.

1 A JUROR: 49.

2 THE COURT: Thank you.

3 A JUROR: Sure.

4 THE COURT: I can check that for you. Karen
5 Stratton?

6 A JUROR: Uh-huh.

7 THE COURT: That's a yes for the court
8 reporter's benefit?

9 A JUROR: I'm sorry, yes.

10 THE COURT: Do you recall what you answered yes
11 to?

12 A JUROR: I'm a sole proprietor. I work off of
13 AR for a surgeon. I have a medical billing business, ten
14 days would jeopardize the accounts receivable, it's just me,
15 so I have a tax I.D., I have my own business.

16 THE COURT: So it's a hardship to be here for
17 the next ten days?

18 A JUROR: Yeah, it would take his whole numbers
19 down. He would probably want to get rid of me or something.

20 THE COURT: And if you're here 9:00 to 4:30?

21 A JUROR: I can't be there for patients and
22 billing calls and the office, so on and so forth, and
23 insurance companies. Plus I'm a Grouponer. I don't know
24 how much that has to do with it.

25 THE COURT: About how often would you say you

1 use Groupon?

2 A JUROR: They contact me daily.

3 MR. HADDEN: Sorry about that.

4 THE COURT: And do you look at the website on a
5 pretty regular basis?

6 A JUROR: Uh-huh.

7 THE COURT: Yes?

8 A JUROR: Yeah.

9 THE COURT: Anything else you answered yes to?

10 A JUROR: I can't think, it might have been
11 another Groupon question, but I think it's all hand in hand.
12 I'm an avid internet shopper.

13 THE COURT: Right.

14 A JUROR: Much to my husband's dismay.

15 THE COURT: All right. Any questions?

16 MR. DESMARAIS: No.

17 THE COURT: Any questions?

18 MR. HADDEN: No, Your Honor.

19 THE COURT: You can go back in the courtroom.

20 A JUROR: Thanks.

21 THE COURT: I propose to strike 49 for the
22 hardship. Any objection?

23 MR. DESMARAIS: No.

24 MR. HADDEN: No.

25 THE COURT: 49 is stricken.

1 (Juror entered the jury room.)

2 THE COURT: I think it's now afternoon, so good
3 afternoon. Thank you, sir, for your patience. What is your
4 juror number, please?

5 A JUROR: 58, I believe.

6 THE COURT: 58. I can check for you. Are you
7 David Wakefield.

8 A JUROR: Bingo. Yes.

9 THE COURT: You are 58. And what did you answer
10 yes to?

11 A JUROR: Well, I have owned IBM stock in the
12 past.

13 THE COURT: Not currently?

14 A JUROR: I don't know. I have a mutual fund,
15 maybe. I don't know.

16 My wife and I use Groupon a fair amount. My
17 brother-in-law is going through the patenting process, so
18 slightly familiar with that, not detailed. And I have a big
19 dentist appointment scheduled for next week, which is a
20 long, five, six hour appointment.

21 THE COURT: Okay. Are you asking me to get you
22 out of that appointment?

23 A JUROR: Good question. I would like to eat
24 corn on the cob sometime this summer.

25 THE COURT: Understood. Were there other things

1 that you answered yes to?

2 A JUROR: I think that's largely it.

3 THE COURT: All right.

4 A JUROR: I mean, I have some friends that are
5 lawyers in town, you know, so...

6 THE COURT: Let's talk about each of these
7 things and if you think of something else, you let me know.

8 You have owned IBM stock in the past. Did you
9 make the decision to buy it?

10 A JUROR: I have in the past, yes, and I made
11 the decision to sell it. But I have mutual funds.

12 THE COURT: You don't know whether the funds own
13 it currently?

14 A JUROR: That's correct.

15 THE COURT: Did you have or do you have strong
16 feelings about IBM that perhaps contributed to your decision
17 to purchase or sell the stock?

18 A JUROR: Just performance.

19 THE COURT: Do you think that IBM as a litigant
20 would start out a little bit ahead or behind in this lawsuit
21 in your mind?

22 A JUROR: I don't think so.

23 THE COURT: You have, you and your wife use
24 Groupon?

25 A JUROR: Yes.

1 THE COURT: About how often would you say that
2 you're on the Groupon site?

3 A JUROR: I actually don't do it. I make the
4 decisions with my wife and she does it. I'm not a real
5 technology guy.

6 THE COURT: Okay. You're part of the decision
7 making process whether to purchase?

8 A JUROR: Yes.

9 THE COURT: All right. If I were to say that I
10 don't want the jurors on this case to have any involvement
11 with Groupon over the next two weeks, would that be a
12 hardship for you or your wife?

13 A JUROR: No.

14 THE COURT: Your brother-in-law is seeking a
15 patent?

16 A JUROR: No, he got one.

17 THE COURT: He got one?

18 A JUROR: Yeah.

19 THE COURT: Do you know anything about what it's
20 on?

21 A JUROR: Yeah. It's a crazy little thing.
22 He's a big wave surfer out in Hawaii and he invented this
23 little contraption that's good for practicing. There is a
24 small surfboard with an inflatable bottom and there is a
25 little ball that it's inflatable, like a dodgeball. He can

1 inflate or deflate it for difficulty. You can use it for
2 dry land practice.

3 THE COURT: Sounds quite fun.

4 A JUROR: You can break your neck.

5 THE COURT: He's selling this product?

6 A JUROR: Yes.

7 THE COURT: Did he express to you any feelings
8 about patents or the patent system?

9 A JUROR: Not particularly.

10 THE COURT: Do you yourself have any strong
11 feelings about patents?

12 A JUROR: I do, I have strong feelings on the
13 protection of them, because I think that's really important
14 to keep R & D money going into things, knowing you can
15 recoup your costs.

16 THE COURT: Your dentist appointment, which day
17 is it?

18 A JUROR: Wednesday.

19 THE COURT: Wednesday. Do you know what time?

20 A JUROR: Yes.

21 THE COURT: What time?

22 A JUROR: 10:00 to 3:00.

23 THE COURT: And if you were in trial between
24 10:00 and 3:00 Wednesday and had to reschedule, how much of
25 a hardship would that be?

1 A JUROR: I can't answer that right now. I
2 would have to talk to my dentist.

3 THE COURT: You don't know how long it would
4 take to reschedule?

5 A JUROR: Yeah, I don't know. I don't know when
6 the time is available.

7 THE COURT: Let's say it was available even a
8 week later, are you okay with that? Would that be a real
9 problem?

10 A JUROR: No. No. It's really up to his
11 schedule.

12 THE COURT: You have friends who are lawyers.
13 Are any of them lawyers here in Delaware?

14 A JUROR: Yeah, quite a few. I have club
15 affiliations and there is a lot of members.

16 THE COURT: Do you know if any of them are at
17 Potter Anderson or Ashby & Geddes?

18 A JUROR: Potter Anderson, but not Ashby.

19 THE COURT: If Potter Anderson was on one side
20 of this case --

21 A JUROR: I was aware of that.

22 THE COURT: -- do you think you could fair and
23 impartial to both sides?

24 A JUROR: Yes.

25 THE COURT: Do you know if any of your lawyer

1 friends do patent related law?

2 A JUROR: I can't speak to that directly. No.

3 THE COURT: Anything else that you thought of?

4 A JUROR: No, that's it.

5 THE COURT: Any questions?

6 MR. DESMARAIS: No, Your Honor.

7 THE COURT: Any questions.

8 MR. HADDEN: Just one, sir. You expressed a
9 strong feeling about the importance of patents, promote R &
10 D. Given that IBM is the patentholder here and Groupon is
11 the accused infringer, would that -- how would you view that
12 from the get go, would Groupon be at a disadvantage?

13 A JUROR: I would like to say no, but it might
14 be, you know. But it would be entirely fact based, I would
15 base my decision on.

16 MR. HADDEN: Before you heard the facts, you
17 would think IBM was in the right because they have the
18 patent?

19 A JUROR: That's a good question. I guess maybe
20 a little bit.

21 MR. HADDEN: Thank you.

22 THE COURT: So if you're on the jury you might
23 learn that besides determining if the patents here are
24 infringed, you might be asked whether they're valid patents.

25 A JUROR: Right.

1 THE COURT: Can you envision being fair and
2 impartial and deciding whether a U.S. issued patent might
3 actually be invalid?

4 A JUROR: Repeat that, please.

5 THE COURT: Sure.

6 You say patents are important.

7 A JUROR: Yes.

8 THE COURT: Do you think that means that if
9 you're asking whether a particular patent is valid or
10 invalid, that you would be likely to say it's valid because
11 you believe that patents are important? I don't know if
12 that was any better way of asking it.

13 A JUROR: Are you saying because of my belief of
14 patents?

15 THE COURT: Yes. One of the issues this jury
16 might have to decide is hey, is this particular patent, is
17 it valid or maybe it should have never been a patent.

18 A JUROR: I see what you mean.

19 THE COURT: But you think patents are important,
20 so might you be more inclined to say this is a valid patent,
21 this patent should remain.

22 A JUROR: I don't think I would be more inclined
23 one way or the other. I would have to listen to the facts.

24 THE COURT: Okay. Do you have any concerns
25 about being a fair and impartial juror in this case?

1 A JUROR: No.

2 THE COURT: All right. Anything else you want
3 to share with us?

4 A JUROR: I think that's it.

5 THE COURT: Okay. Thank you. You can go back
6 in the courtroom. Thanks for your time.

7 Any motions?

8 MR. DESMARAIS: No.

9 THE COURT: Any motion?

10 MR. HADDEN: I move for cause, at least given he
11 also had the dental issue, we have enough jurors.

12 THE COURT: Do you object?

13 MR. DESMARAIS: Yes, I object. He said he could
14 be fair and impartial and he said the dental could be
15 rescheduled. We can't strike people just because they find
16 patents important. People should find patents important.

17 MR. HADDEN: Beyond that, he said IBM would
18 start off with an advantage.

19 THE COURT: I'm going to deny the motion. I was
20 persuaded in the end that he would be fair and impartial. I
21 think he obviously doesn't know the facts, he doesn't know
22 the law, and just because he thinks patents are important I
23 don't think precludes him from being fair and impartial. I
24 gave him every chance to have me let him out with the
25 dentist or reschedule being a problem and he seemed okay

1 either way. So the motion is denied.

2 (Juror entered the jury room.)

3 THE COURT: Good afternoon.

4 A JUROR: Good morning.

5 THE COURT: You can have a seat. Come to the
6 one near us. Thank you. And your junior number, please?

7 A JUROR: Eight.

8 THE COURT: Are you Norman Clemo?

9 A JUROR: Yes, sir.

10 THE COURT: And do you recall what you answered
11 yes to?

12 A JUROR: I believe was do you regularly use a
13 computer or other device to make online purchases.

14 THE COURT: You do?

15 A JUROR: I do.

16 THE COURT: About how often would you say you're
17 making online purchases?

18 A JUROR: Probably at least once a week.

19 THE COURT: Is Groupon one of the sites that you
20 use?

21 A JUROR: No.

22 THE COURT: Have you ever been on Groupon?

23 A JUROR: No. I don't even know what it is.

24 THE COURT: Have you heard of it before?

25 A JUROR: I have heard of it.

1 THE COURT: You don't have any real feelings
2 about them? For the record that was a no; right?

3 A JUROR: No.

4 THE COURT: Okay. Other things that you
5 answered yes to?

6 A JUROR: That was it.

7 THE COURT: That was it.

8 Any questions?

9 MR. DESMARAIS: No, Your Honor.

10 THE COURT: Any questions?

11 MR. HADDEN: No, Your Honor.

12 THE COURT: You can go back to the courtroom.

13 Thank you.

14 Any motions?

15 MR. DESMARAIS: No.

16 MR. HADDEN: No.

17 THE COURT: I think that's it; right.

18 THE CLERK: Yes, I believe so.

19 THE COURT: So I had reserved on juror number 4,
20 the one who was the former patent examiner. IBM has moved
21 to strike and Groupon opposes. I'm going to grant the
22 motion to strike. I actually think it's a difficult very
23 close call. But I do think that he will in the course of
24 the deliberations be motivated to share the fact that he is
25 a patent examiner and share some evidence and perhaps

1 opinion of things that are not in the record and I'm not
2 sure how big a problem that is, but all that suggest to me I
3 should be cautious and strike juror number 4. So with that,
4 Mr. Looby, why don't you tell us who is still in the pool.

5 THE CLERK: Okay. Juror number 1. Juror
6 numbers 5 through 9, 11, 12, 13, 20, 21, 23, 29, 34 and 35,
7 37, 39 and 40, 42, 43, 44 and 45, 51, 58 and 60.

8 THE COURT: Thank you. Any questions or
9 disputes about who is in the pool?

10 MR. DESMARAIS: No, Your Honor.

11 MR. HADDEN: No, Your Honor.

12 THE COURT: Let's just talk about where we are.
13 So it's 12:10. When we go back in, we will finish the jury
14 selection process, then I'll let them go for lunch. Do we
15 have issues or objections that relate to either side's
16 opening statement that will need to be dealt with before we
17 get to openings?

18 MR. OUSSAYEF: Yes, Your Honor.

19 THE COURT: On both sides?

20 MS. SHAMILOV: Correct.

21 THE COURT: And nonbinding estimates as to how
22 long the openings are going to be once we get there?

23 MR. DESMARAIS: I would say, you know,
24 forty-five minutes to an hour would be roughly what I'm
25 thinking.

1 THE COURT: And what about Groupon?

2 MR. HADDEN: Ours will be less, thirty to forty
3 minutes.

4 THE COURT: All right. Well, be prepared to
5 discuss the objections as soon as the jury leaves and then
6 we'll hope to give you a little bit of a break, and me, to
7 eat something and then we'll figure out where we are. So
8 you'll get yourselves assembled in the courtroom.

9 (Following a brief recess:)

10 THE COURT: Thank you again to everyone for your
11 patience. I will need to ask for your patience just a
12 little bit longer, but we are gearing up for the last stages
13 of the jury selection process.

14 What's going to happen next is that Mr. Looby is
15 going to randomly call 14 juror numbers. If you are one of
16 these 14, please follow the instructions of Mr. Looby about
17 where to take a seat in the jury box which is up here to my
18 right.

19 After 14 of you are seated, each side gets three
20 of what are called preemptory strikes, that is they can
21 strike up to three jurors per side for no reason at all.
22 And the way that we do the strikes is by silently passing a
23 clipboard back and forth from one side to the other, so I'll
24 ask that you be patient and quiet if you can so that we can
25 move through that process as quickly as possible.

1 Once the lawyers have completed the striking
2 process, Mr. Looby will announce which six have been
3 stricken and, therefore, which eight remain to be our jury.
4 At that point we'll be able to excuse all of you except the
5 eight who will be our jury. Please bear with us and we'll
6 move as efficiently as we can.

7 Mr. Looby.

8 THE CLERK: Juror number 13, please come
9 forward. First seat in the first row.

10 Juror number 34, second seat in the first row.

11 Juror number 60, third seat.

12 Juror number 35.

13 Juror number 42.

14 Juror number 51.

15 Juror number 37.

16 Juror number 5, first seat in the second row.

17 Juror number 21.

18 Juror number 6.

19 Juror number 58.

20 Juror number 45.

21 Juror number 44.

22 Juror number 7.

23 THE COURT: We will begin the striking process.

24 (Silent striking process takes place.)

25 THE COURT: Are there any objections to the

1 striking process?

2 MR. DESMARAIS: Not from the plaintiff, Your
3 Honor.

4 MR. HADDEN: No, Your Honor.

5 THE COURT: Okay. Mr. Looby.

6 THE DEPUTY CLERK: Will the following jurors
7 return to the back of the courtroom.

8 Juror No. 13.

9 Juror No. 35.

10 Juror No. 37.

11 Juror No. 58.

12 Juror No. 44. And, Juror No. 7.

13 THE COURT: Okay. Those of you in the jury box,
14 please sit tight, and I'll have some more instructions for
15 you in a moment.

16 Those of you not in the jury box, you are not
17 part of the jury for this trial. I want to thank you again
18 for your willingness to serve, but you are all free to go.
19 Thank you very much.

20 (Unselected jurors leave courtroom.)

21 THE COURT: Ladies and gentlemen of the jury,
22 Mr. Looby will pass around to you now copies of the Bible.
23 And we're going to begin your jury duty with administering
24 another oath.

25 Mr. Looby.

1 (Selected jurors placed under oath.)

2 THE COURT: Thank you, Mr. Looby.

3 So, ladies and gentlemen of the jury, hopefully
4 you will be pleased that almost the first thing we're going
5 to do is give you a break to go find some lunch. But a few
6 words before we do that.

7 On your way out of here, Mr. Looby will take you
8 through this door just to your immediate left and that leads
9 directly to the jury room. I saw many, if not all of you,
10 in the jury room over the course of the jury selection
11 process. That will be a little bit of your second home in
12 the time that you are with us for the trial. Mr. Looby will
13 show you how to get in and out of the jury room and where
14 you can leave your things, if you wish to do so.

15 You all have juror stickers. At some point, we
16 will probably give you lanyard necklace versions of those
17 that say "juror" on them. As you will hear me say repeatedly,
18 it is important that we know that you are our jurors because
19 we are not to have any interaction with you. Nobody
20 involved in the case should be talking to you, and in order
21 for us to know that you are our jurors, it helps if you have
22 a sticker on a necklace on so we can identify you.

23 There is no talking about the case with anybody
24 else or with each other until all the evidence is in and I
25 tell you it is time to start talking about the case, so I'll

1 give you more instructions on that as well but just
2 understand that now even though you know very little about
3 the case, don't talk about the case with one another.

4 I'm going to give you until 1:30 to find lunch
5 and find your way back to our jury room. When we get
6 started at around 1:30, the first order of business will be
7 for me to give you some preliminary instructions. So I'll
8 be reading instructions to you. We also have some of the
9 instructions in a video form, so we'll show you a video.
10 And after that, we'll hear opening statements from the
11 parties. And we will be done by 4:30 today.

12 All right. With that, Mr. Looby, let me have
13 you take the jury out.

14 (Jury left courtroom.)

15 THE COURT: Okay. You can all have a seat.

16 I understand that there are objections relating
17 to opening statements, so I do want to begin with that.
18 We'll start with the plaintiff and any objections you want
19 to raise to the defendant's openings.

20 MR. OUSSAYEF: Good morning, Your Honor. Karim
21 Oussayef for IBM.

22 THE COURT: Good afternoon now.

23 MR. OUSSAYEF: Good afternoon.

24 THE COURT: Where did the morning go ...

25 MR. OUSSAYEF: I'm calling up the document

1 camera.

2 Your Honor, the first issue with Groupon's
3 opening statement regards Your Honor's claim construction
4 about the term "partition." During claim construction,
5 Groupon argued that a partition needs to be fixed and not
6 moving. And that is something that Your Honor's claim
7 construction decided that that was not a requirement of
8 the term.

9 And now when we look at the opening demonstratives
10 that Groupon has presented to us, there is a movie, it's not
11 clear exactly how they intend to use the movie, but the movie
12 shows resizing a window over and over again, zooming in and
13 out. And based on that disclosure, it is our understanding
14 that Groupon intends to argue contrary to the Court's
15 construction that because a window on a browser can be resized
16 from one size to another that partitions or areas are not
17 fixed and therefore they don't infringe. And we believe
18 that to be contrary to the Court's claim construction. And,

19 furthermore, even if there were some marginal
20 relevance to some issue which we don't know what issue that
21 would be, then it would be highly prejudicial because the jury
22 would be thinking about an argument that would be contrary to
23 the Court's construction. And,

24 Specifically, just to spell it out in a little bit
25 more detail, what the Court has already decided is: Contrary

1 to Groupon's contention, the specification and prosecution
2 history do not support construing "partition" as a fixed,
3 nonoverlapping portion of the screen display. To the
4 contrary, the Court agrees with IBM that the specification
5 shows that the "partition for presenting applications" does
6 not exclude that area of the screen from also presenting other
7 data outside of applications such as window partitions pop up
8 in front of the body partition.

9 So now, I would ask, Mr. Kelly, if you could
10 please play the video that was disclosed to us yesterday --
11 or the day before yesterday.

12 (Elmo settings adjusted.)

13 MR. OUSSAYEF: Excuse me just a second, Your
14 Honor.

15 THE COURT: Sure. Not a problem.

16 (Elmo settings further adjusted.)

17 MR. OUSSAYEF: Your Honor, in the absence of the
18 actual video, I can just describe it to you.

19 THE COURT: Sure.

20 MR. OUSSAYEF: Basically what we see is a
21 browser window, and the browser window is initially the
22 entire screen, and then there is a slow video which resizes
23 to make it smaller and then to make it bigger again. Then
24 there is a zooming in on the area of the browser window and
25 a zooming back out. So there is a demonstration of a window

1 that is not fixed.

2 So that is our objection, Your Honor.

3 THE COURT: How many objections do you think you
4 have?

5 MR. OUSSAYEF: I have two more objections, Your
6 Honor.

7 THE COURT: Okay. We'll go through them all.

8 MR. OUSSAYEF: Okay. The second objection is
9 based off of a part of the opening slides that presents a
10 description of a preferred embodiment of the '601 patent.

11 On this slide here, we see something that
12 Groupon intends to present showing a statement about a
13 preferred embodiments whereby all hyperlinks passed back and
14 forth between the client and the server are embedded with
15 state information.

16 However, that is a preferred embodiment in the
17 claim language that actually talks about embedding hyperlinks
18 in an output from a service, not in all hyperlinks passed back
19 and forth between the client and the server.

20 This, too, is an issue that the Court has
21 previously constructed. And here, what happened was that
22 Groupon argued at claim construction that the construction
23 for "all hyperlinks in an output" should be construed as
24 "all hyperlinks in a web page."

25 The Court found that was a preferred embodiment

1 and found there were instances where not all hyperlinks were
2 embedded in the web page but rather just all hyperlinks
3 within the output. So there, too, it is contrary to the
4 Court's claim co-construction.

5 So here, Groupon's construction improperly
6 equates "output" to the entire web page, contrary to the
7 specification. And then the Court goes on to explain the
8 logic about the Court's construction.

9 So here, by having a preferred embodiment that
10 all hyperlinks need to be embedded in every communication
11 back and forth, that, too, is prejudicial.

12 THE COURT: Do you have any reason to think that
13 Groupon is going to argue to the jury that this is something
14 other than a preferred embodiment?

15 MR. OUSSAYEF: Yes, Your Honor. In fact, if
16 we look at their later slides, we actually have an example
17 where they show a web page with several hyperlinks on the
18 page. And they showed a demonstration that they believe
19 that -- with several hyperlinks and Xs through them showing
20 presumably that they're not embedded with state information.
21 So they show a picture of a web page with several Xs over
22 hyperlinks which we understand them to be arguing that they
23 don't embed with state information there.

24 THE COURT: So that would be an example of
25 something that is not this preferred embodiment, but your

1 argument would be it is still within the scope of the
2 claims; is that correct?

3 MR. OUSSAYEF: I would argue that it is an
4 example of the preferred embodiment. What I'll argue in
5 argument is the web page is the entire output where the
6 Court has already construed the term to not mean the
7 entire web page. So by showing the web page with certain
8 hyperlinks Xed out, that is contrary to the Court's previous
9 construction.

10 THE COURT: Okay.

11 MR. OUSSAYEF: The third argument concerns a
12 part of the slide deck that defendants have disclosed to us.
13 Here, what we see is a disclosure of the Patent Office
14 proceedings whereby there is an issue up on appeal where a
15 certain of the patents were found to -- found certain claims
16 to be canceled, but that issue is now on appeal. That
17 concerns some of the asserted claims in this case but not
18 all of the asserted claims.

19 So the issue here is that this will be unduly
20 prejudicial because we're talking about an outside proceeding,
21 namely, the Patent Office, with a different standard of review
22 and a different standard of how to construe the claims and a
23 different standard of how to prove invalidity.

24 THE COURT: So I just want to understand. Some
25 of the claims that are asserted before this jury now stand

1 canceled at the PTO.

2 MR. OUSSAYEF: Yes, that's true. One of the
3 asserted claims of one of the patents is canceled. So my
4 understanding is that Groupon intends to introduce this to
5 call into question the validity in this case of not only
6 the canceled claims but also the -- not only the one
7 canceled claim that is still asserted in this case but
8 also the non-canceled claims, and introducing that kind of
9 information about a separate proceeding with different
10 standards will be confusing to the jury and will cause a
11 trial within a trial about the Patent Office proceedings,
12 and it will also be prejudicial not only to the claim that
13 is still up on appeal but also to the claim that is not
14 even canceled at all.

15 THE COURT: So what kind of proceeding was this
16 in front of the PTO?

17 MR. OUSSAYEF: This is a PTAB IPR proceeding
18 that is currently pending before the Federal Circuit.

19 THE COURT: On the patentee's appeal, correct?

20 MR. OUSSAYEF: That's correct, Your Honor.

21 THE COURT: What is the status of that appeal?

22 MR. OUSSAYEF: So that briefing is ongoing right
23 now. IBM has submitted its appeal brief, and we're still
24 waiting on the response from the Patent Office.

25 THE COURT: So your objection obviously is to

1 this slide at this point, but are you objecting to anything
2 relating to the IPR proceedings coming in at any point
3 during the trial?

4 MR. OUSSAYEF: Yes, Your Honor. Current with
5 the Court's recent decisions in things such as *Integra Life*
6 *Sciences v HyperBranch Medical Technology*, a case in which
7 Your Honor decided just a couple of months ago, the IPR
8 should be excluded under Federal Rule 403, both under the
9 prejudice prong of 403 and also under the undue confusion
10 prong of 403 as well.

11 THE COURT: Okay. Is that all three objections
12 for now?

13 MR. OUSSAYEF: Yes, Your Honor. Those are the
14 three objections to the opening slides.

15 THE COURT: All right. Let me hear from Groupon
16 on just IBM's objections for the moment.

17 Good afternoon.

18 MS. SHAMILOV: Good afternoon. The first three
19 objections, the same category, we represented to IBM, I'll
20 represent here in open court, Groupon does not intend to
21 argue anything or will present anything to the jury that is
22 contrary to the Court's constructions. We'll abide by the
23 Court constructions and use them, and so will our witnesses.

24 The video that was mentioned is a Groupon
25 website in a browser, and the video shows how you can

1 minimize the browser, zoom in/zoom out.

2 The claims talk about areas having areas of the
3 screen. There are two issues of whether Groupon controls
4 what area its web pages display in, and obviously the issue
5 will be whether Groupon's websites even have areas. It has
6 nothing to do with areas being fixed or non-fixed. This is
7 going to be the issue what the jury has to decide.

8 THE COURT: So in opening and then through
9 testimony and closing argument, you're never going to
10 suggest or of course expressly argue that you don't infringe
11 because you don't have a fixed partition.

12 MS. SHAMILOV: We are never going to say that
13 the claims require to have fixed areas and we don't do fixed
14 areas, we will absolutely apply the Court's construction.
15 That slide is not going to be used at all in the way that
16 they're suggesting it's going to be used in opening or all
17 through trial.

18 THE COURT: Okay.

19 MS. SHAMILOV: With respect to the second slide
20 with the quote from the patent, again, we will abide by the
21 Court's constructions and use them. We obviously think that
22 we're entitled to tell the Court, the jury what the patent
23 describes, so we're putting the quote from the patent that,
24 you know, adheres to the patent.

25 With respect to what's coming later, the slides

1 that they have alluded to that there is a hyperlink on the
2 page with crosses, that has nothing to do with what the
3 patent is talking about, that slide show is Groupon's page
4 and specific page that IBM was saying, you know, is approved
5 of infringement in this case if you will, and it's just
6 showing which links on Groupon's page -- in fact, on that
7 page not a single link includes any information. There is
8 no conflicting out, any conflict or whatever, at all, about
9 what the patent is about or we're not arguing the scope of
10 the claims outside the Court's construction. We really only
11 have one slide that has a quote from the patent and one
12 slide that shows Groupon's page specifically that will be at
13 issue here.

14 THE COURT: Is the suggestion at least going to
15 be in opening that Groupon is not this preferred embodiment?

16 MS. SHAMILOV: No, Your Honor.

17 THE COURT: No. Okay.

18 MS. SHAMILOV: With respect to the last slide
19 that two IPR decisions, claim 1 in those discussions was
20 found to be unpatentable, IBM, over exactly the same prior
21 art at issue here. If IBM is going to get up and claim --
22 and the other two claims are dependent on that claim, so the
23 elements of claim 1 will have to be considered as part of
24 the other two claims, if IBM is going to get up and argue
25 that its patents are valid, and the patent office already

1 determined that one claim that the jury, will be in the
2 front of the jury is unpatentable over the prior art,
3 they'll have to consider the same claim amounts as part of
4 the other two dependents claims that they were asserting
5 here. We don't see why we shouldn't be able to tell the
6 jury that the same argument already found, to show that
7 claim 1 has been disclosed.

8 THE COURT: The patent is legally valid and
9 enforceable in this courtroom today, isn't it?

10 MS. SHAMILOV: That's correct. But I think it's
11 a decision from the patent office and in a way it's almost
12 part of the file wrapper if you will now of what the patent
13 office decided, the independent claim of those patents, it's
14 not patentable over the two pieces of prior art that will be
15 in front of the jury.

16 THE COURT: The PTAB would be applying a
17 different standard than this jury is going to be asked to
18 apply, isn't that true?

19 MS. SHAMILOV: I think whether the claim is
20 valid or not valid, that's the same standard.

21 THE COURT: Sorry, did the PTAB have to find
22 clear and convincing evidence of invalidity.

23 MS. SHAMILOV: I'm not sure if THE clear and
24 convincing evidence actually applied, Your Honor, in front
25 of the patent office. All I know is that if a claim itself

1 is found to be unpatentable as a PTAB, you don't get to come
2 to court later and say because the standards were different
3 now the claim is valid. Once the patent, the claim is
4 invalid, it's invalid whether we are in court or not in
5 court.

6 THE COURT: So I'm not sure where you're getting
7 that from. What can I point to to say you don't get to come
8 to court and do what the patentee is doing?

9 MS. SHAMILOV: I'm saying if the patent office
10 has determined a patent is invalid, a claim has been invalid
11 and it's canceled, you don't get to come and relitigate it
12 in court and say because a different standard was applied in
13 the patent office somehow the claim is now uncanceled.

14 THE COURT: That's where you're losing me. My
15 understanding, but I'm happy to be corrected if you can
16 point me to something, that's exactly what you do get to do
17 under current law until the Federal Circuit says we're
18 affirming the PTAB finding, the patentee has a legally valid
19 claim that they can enforce in this courtroom.

20 MS. SHAMILOV: All I'm saying, Your Honor, is
21 the claim construction, maybe the standards are different,
22 for now that's sort of different than what's applied at the
23 PTAB and what's applied here, I don't think there is any
24 specific claim construction differences here, I'm saying if
25 they're going to come up and say all these claims are valid

1 and the prior art we're putting forth is not invalidating
2 these claims, I think we get to rebut that and put something
3 that shows that the patent office already thought otherwise
4 at least with one claim, the elements of which are part of
5 the other two claims that they're asserting here.

6 THE COURT: What about the concerns of jury
7 confusion and unfair prejudice to the patentee here?

8 MS. SHAMILOV: I'm not sure they'll be confusion
9 here because we -- they will know that it's done by the
10 patent office and the patent office considered it. They
11 will be provided instructions on how they have to determine
12 validity here by Your Honor. Every single juror I believe
13 said that they will be able to follow the instructions. I
14 think the instructions are very clear what they'll have to
15 do.

16 THE COURT: Anything else on their objections?

17 MS. SHAMILOV: Not on their objections, Your
18 Honor. Thank you.

19 THE COURT: Anything by way of response?

20 MR. OUSSAYEF: Just briefly, Your Honor.
21 Groupon's counsel's comments about claim construction still
22 give me pause, so I think it's important to have a marker
23 here for future proceedings in the case to ensure that we
24 don't hear any claim constructions contrary to what the
25 Court has already ordered. And so on that issue, given

1 their representations, you know, I think we still have grave
2 concerns about what they're presenting to the jury.

3 On the second issue regarding the PTAB
4 proceedings, it's different claim construction, there is
5 different claim constructions there, there is different
6 standards of proof, it's simply inconceivable that a jury
7 wouldn't be prejudiced by the fact that there has already
8 been a decision, all be it a nonfinal decision about the
9 validity of the patents and having to go into the
10 differences and the standards the differences in the claim
11 constructions, how that impacted a different office's
12 procedures and how they consider the prior art will be
13 unduly prejudicial and very confusing for the jury.

14 THE COURT: That may be, but isn't it akin to
15 additional prosecution history at this point? I assume the
16 jury is going to hear some of the initial examination
17 prosecution history, so aren't we giving them an incomplete
18 story by not telling them where the PTO is now on this
19 claim?

20 MR. OUSSAYEF: Not at all, Your Honor, it's
21 quite the opposite. We're giving them an incomplete picture
22 if Groupon can present evidence about the PTAB proceedings
23 because we don't talk about the appeal and what's going on
24 there. You know, that process going into the full details
25 of that process and the fact that the claims are not

1 actually, you know, are still enforceable, would be, you
2 know, something that would have to be introduced as well to
3 explain why the patents are still at issue here and that
4 there needs to be a clear line and the clear line should be
5 let's talk about what's in this courtroom and the proper
6 standards here as opposed to another proceeding and trying
7 to compare the two and figuring out, you know, why the jury
8 here should decide in a different way than the patent
9 office, that the PTAB is deciding at the same time.

10 THE COURT: Thank you. So there is three
11 objections by IBM. With respect to one and two, I'm going
12 to overrule them. With respect to number three, I am going
13 to sustain it. One and two presents similar issues,
14 essentially arguments that these slides and perhaps the
15 statements being made in connection with those slides will
16 be inconsistent with or will conflict with the Court's claim
17 construction. I have the defendant's representation that
18 that is not how they are using the slides. The slides on
19 their face that have been shown to me do not contradict the
20 Court's claim construction. I certainly remind everybody,
21 it would be a huge mistake and wrong and something that
22 would cause negative consequences if you argue in a way that
23 conflicts with the Court's claim construction, if you elicit
24 testimony from a witness that does that or if you, you know,
25 make any suggestion to that effect.

1 That said, you know, determining exactly where
2 the line is between applying the claim construction and
3 actually contradicting it is something that sometimes
4 requires sort of in the moment careful assessment, and I can
5 only assess what's been presented to me and I don't see it
6 as a conflict. And I also have the representation from the
7 defendant that they'll be held to that they won't contradict
8 the Court's claim construction.

9 In terms of the third objection, that one is
10 sustained. The slides describing the PTAB proceedings and
11 any discussion of PTAB proceedings is not going to be
12 permitted at this trial. I make that decision principally
13 on 403 grounds. It is unclear to me that there is any
14 relevance at all to that proceeding. But even assuming that
15 there is some, I think it is very substantially outweighed
16 by the risk of confusion of the jury, risk of unfair
17 prejudice to the patentee, even risk of wasting some of the
18 limited time that I have given you all.

19 Under current law as I understand it, the PTAB
20 follows a different claim construction process than we do.
21 I don't believe they apply the clear and convincing evidence
22 standard. They have a different record in front of them
23 than we will have here. And to tell the jury that the
24 patent is legally valid, it was issued by the PTO, but now
25 there is another PTO or an arm of the PTO that has looked at

1 it under different rules looking at different evidence, some
2 of the same evidence, but some clearly not, and now says,
3 well, we think we shouldn't have issued this patent, but oh,
4 by the way, that's all subject to a further level of review
5 which is ongoing and none of us know how it will come out I
6 don't think is something I should burden the jury with and
7 so I won't. So that's my ruling on IBM's objections.

8 Any objections that Groupon has to what you
9 anticipate in the opening statement of IBM?

10 MS. SHAMILOV: Your Honor, I have -- it's one
11 objection that affects several slides.

12 THE COURT: Okay.

13 MS. SHAMILOV: Let's see if I can do this. So
14 basically, it concerns -- it concerns this particular cloud
15 icon.

16 THE COURT: The cloud icon?

17 MS. SHAMILOV: The cloud icon, which generally
18 represents internet and actually used in our slide to
19 represent internet. The issue is that this particular cloud
20 is being shown as part of being what IBM patent describes.
21 For example, this is the down terminal approach which is
22 prior art that's described in the Prodigy patent, so what's,
23 in the '80's. They're using the internet cloud here.

24 They're using the internet cloud in describing
25 the Prodigy patents themselves. And then they're using the

1 internet cloud in describing how Groupon is used in maps to
2 the patent. It is confusing and misleading because internet
3 is not what the prior patents describes as the network, and
4 they're equating the network from the '80's to basically the
5 worldwide web and the internet.

6 So all we ask, we asked them to use different
7 icons to represent the network because otherwise it's a
8 visual and misleading element and that's basically the
9 nature of the dispute, Your Honor.

10 THE COURT: Did you have a suggestion for them
11 as to what they could depict?

12 MS. SHAMILOV: Yes. They had, the earlier
13 version of the slide had a different icon, we raised an
14 objection, and they decided instead of just adding this icon
15 and using it for one and the other, they replaced that icon
16 completely with this one. They have one icon that they have
17 used in the previous slide. All I'm saying is use one of
18 them, you can use that other icon for when you're talking
19 about the Prodigy patents and the state of the art prior to
20 that, and they can use the internet patent when they talk
21 about Groupon and the worldwide web, but using one icon
22 across the board is misleading.

23 THE COURT: Thank you. I'll hear from IBM.

24 MS. SHAMILOV: Before I sit down, I'm sorry,
25 there were two other witnesses disclosed to potentially be

1 called today. I have issues to raise with that, but I can
2 do that after.

3 THE COURT: I'm not sure we're going to get to
4 the witnesses today, but remind me if we get to that point.

5 MS. SHAMILOV: I will definitely do that.

6 THE COURT: Thank you.

7 MR. DESMARAIS: Good afternoon, Your Honor, John
8 Desmarais for IBM. They objected to the slides in their
9 previous version. So in an attempt to accommodate them, we
10 changed the prior icon to just a generic cloud which is
11 standard representation of a network. The patents are a
12 network. It says network all over the patents. That's what
13 our allegation is. If they have a different view of what
14 our patents -- what the network is that our patents relate
15 to or what the network is that their products relate to,
16 they can argue that. Our slides don't have to adopt their
17 view of what the network is, our slides are adopting our
18 view of what the network is.

19 THE COURT: Are you going to suggest or argue to
20 the jury that that cloud represents the same network in each
21 of the different slides you plan to show?

22 MR. DESMARAIS: It depends what slide you're
23 talking about, but it's clear that our allegations in this
24 case is that when Groupon users use Groupon over the
25 internet, the patents in this case apply to the internet.

1 In fact, the defendants have never moved for summary
2 judgment to say the opposite. It is true that when Prodigy,
3 when the patents were being developed in Prodigy, they were
4 being developed not necessarily over the internet, but the
5 patents are generic enough about the network that is being
6 used in the patent that it certainly applies to the
7 internet.

8 THE COURT: I guess the question is, there is
9 something on the order of four of these slides using exactly
10 the same cloud.

11 MR. DESMARAIS: Yes.

12 THE COURT: Is it IBM's view that the cloud
13 represents the same identical thing in each of those four
14 slides?

15 MR. DESMARAIS: It was attempting to represent a
16 network, it's not necessary that it be the internet, it's
17 not necessary that it be a different type of network. The
18 point of the slides isn't the cloud, the point of the slides
19 is what's happening in the network, whatever the network is.

20 THE COURT: So what would be prejudicial or
21 would you object to just having a different cloud image at
22 least on some of the slides so that the jury isn't confused
23 into thinking whatever that cloud is representing never
24 changed across the time periods depicted in any of these
25 slides?

1 MR. DESMARAIS: I think the lawyers can make
2 that argument if they want to make that argument. I think
3 it doesn't make any sense -- that would be prejudicial to
4 IBM because our arguments is the patents apply to the
5 internet and they're arguing that it isn't, but that's their
6 argument. I don't think there is any merit to that --

7 THE COURT: Hold on. When I'm talking you
8 should stop. So my concern is I think we all agree as a
9 factual matter that that cloud is not representing the same
10 thing in each of the four or so slides; correct?

11 MR. DESMARAIS: I don't think we all agree to
12 that.

13 THE COURT: Well, then, tell me what does the
14 cloud image, what's it depicting?

15 MR. DESMARAIS: A generic network. It doesn't
16 matter whether it's the internet or some other network, it's
17 depicting a generic network.

18 THE COURT: Is the generic network depicted in
19 the Prodigy slide, can it be the same generic network
20 depicted in the internet slide?

21 MR. DESMARAIS: Yes, it can. That's IBM's
22 position. That's what this trial is about.

23 THE COURT: Are you going to argue or prove that
24 the internet in today's time frame is the same as it was in
25 the time frame that Prodigy patents were being developed?

1 MR. DESMARAIS: No. In fact, I will make that
2 clear, well I intend to make that clear in my opening that
3 Prodigy actually was shortly before the WWW invention, I'm
4 going to explain all that. There is going to be nothing
5 confusing about the slides. I'm going to tell the jury
6 exactly what the timeline is. There is a timeline that
7 shows when Prodigy came out and when WWW started and then
8 what happened next. I'm laying that all out and I'm going
9 to explain that. The cloud isn't anything other than a
10 network, that's why we made it generic, that's the whole
11 point of it.

12 THE COURT: Anything else you want to say?

13 MR. DESMARAIS: No, Your Honor.

14 THE COURT: We'll hear from Groupon.

15 MR. HADDEN: Your Honor, this isn't the same
16 network. The Prodigy patents describe a specific network
17 which is not either the internet or the worldwide web. It's
18 an IBM network where you dial up your phone, connect to a
19 IBM modem base and talk to an IBM mainframe.

20 They're going to try to say this is exactly like
21 shopping now in the worldwide web by putting up the same
22 cloudy icon falsely suggesting that that was the way Prodigy
23 worked and they're going to talk about the history of
24 Prodigy and show the cloud and they're going to try to make
25 that very clear distinction.

1 The cloud has a meaning. Everybody knows the
2 cloud means the internet. These patents were not developed
3 on the internet. Prodigy did not work on the internet. And
4 the suggestion that we can put the same cloud here,
5 terminals here, terminals there, and therefore Prodigy was
6 shopping online now on the internet and the worldwide web is
7 just clearly misleading.

8 THE COURT: I'm told the suggestion and the
9 evidence is going to be that cloud represents a network, and
10 you'll be free to prove or argue or suggest that the network
11 depicted in slide one is not nearly the network depicted in
12 say slide four. Why is that not an appropriate thing to
13 allow to happen here?

14 MR. HADDEN: Because they're going to stand up
15 and say IBM did this in Prodigy in 1988. They're going put
16 up a cloud. They are not going to talk about what that
17 network is, they're just going to put up a cloud. We are
18 going to get to 2018, here is how you shop online over the
19 internet and worldwide web, wow, it's the same cloud. We
20 have a user and computer, we have the same cloud in between
21 and we have some server. The clear depiction there is that
22 Prodigy invented shopping on the internet in 1988 and that's
23 nonsense.

24 All they need to do is put a box. If they want
25 to have a cloud, whatever icon they want, when they put up

1 the Prodigy sign, they should say IBM network. When they
2 put up the internet, they can say network, worldwide web,
3 whatever they want, otherwise it's really confusing.

4 THE COURT: Okay. Did you have something you
5 wanted to add as well?

6 MS. SHAMILOV: Just one comment that I felt you
7 might find helpful is this cloud appeared in their slide
8 after it was disclosed in our slide we showed the cloud and
9 how worldwide web from Groupon works, basically in response
10 to our objection took the slide from our slide and
11 promulgated it in the Prodigy slide which I think is a
12 problem.

13 THE COURT: All right. I'm going to overrule
14 the objection. You all can use the clouds that you
15 evidently each have. I certainly hear the concern but I
16 think it is within the fair range of when an opening
17 statement is to depict "a network with a cloud icon" and to
18 not change that cloud icon if you wish not to do so.

19 Mr. Desmarais has described what he intends to
20 be depicting there. And I'm quite confident that whoever
21 is doing the opening for defendant can point out that the
22 evidence will, in your view, show that that cloud does not
23 represent the same thing in each of those time frames or
24 slides or embodiments. So I'm overruling the objections.

25 Does that take care of everything that I have to

1 decide before we do openings, as far as plaintiff knows?

2 MR. DESMARAIS: Yes, Your Honor.

3 THE COURT: And as far as defendant knows?

4 MR. HADDEN: Yes, Your Honor.

5 THE COURT: So we'll take a break until 1:30,
6 and then we'll do all the instructions. And then based on
7 your representations about the timing, I think I'm going to
8 try to get through the plaintiff's opening before break, and
9 then take a break, and then do the defendant's opening. And
10 then we'll see if there is any time left, and if there is,
11 is there any witness that could testify before me ruling on
12 objections or does it deal with the first witness?

13 MS. SHAMILOV: There is an objection, Your
14 Honor.

15 THE COURT: On the first witness. Okay. So
16 then we'll talk further at with whenever the first break is
17 and figure out if we need to deal with that today. We will
18 be in recess.

19 (Lunch recess taken.)

20 * * *

21 1:37 p.m. - Afternoon Session.

22 THE COURT: The jurors are all back from lunch.
23 Any issues before we bring them in?

24 MR. DESMARAIS: Not from plaintiff.

25 MR. HADDEN: No, Your Honor.

1 THE COURT: All right. Let's bring them in.

2 (Jury returned.)

3 THE COURT: Welcome back, ladies and gentlemen
4 of the jury. I hope you found some lunch.

5 So the first thing that is going to happen is my
6 deputy, Ms Ghione, who I think you have now met, is going to
7 hand you a document, what is called the preliminary jury
8 instructions. You will each have your own copies for you to
9 have and refer to if you wish during the trial.

10 I'm going to read this document to you. Feel
11 free to look at your own copy if you wish as I'm reading to
12 you.

13 You will see, as I sort of alluded to this
14 morning, there is a patent video that is part of these
15 instructions. It actually comes up at page 2. So after I
16 read for just a moment or two, we'll pause for the video and
17 then I will read the rest of this.

18 I'm beginning on page 1.

19 Introduction.

20 Members of the jury: Now that you have been
21 sworn in, I have the following preliminary instructions for
22 guidance on your role as jurors in this case.

23 These instructions are intended to introduce you
24 to the case and the law that you will apply to the evidence
25 that you will hear. I will give you more detailed

1 instructions on the law at the end of the trial. Also,
2 because this is a patent trial which will deal with subject
3 matter that is not within the everyday experience of most of
4 us, I will additionally give you some preliminary
5 instructions regarding patents to assist you in discharging
6 your duties as jurors.

7 I expect that your commitment as jurors will
8 last approximately ten business days, through July 27. This
9 case involves multiple issues, and so we will break the
10 trial into multiple phases.

11 You will hear the evidence, decide what the
12 facts are, and then apply those facts to the law that I will
13 give to you.

14 You, and only you, will be the judges of the facts.
15 I play no part in judging the facts. You should not take
16 anything I may say or do during the trial as indicating what
17 I think of the evidence or what your verdict should be. My
18 role is to be the judge of the law. I will make whatever
19 legal decisions have to be made during the course of the
20 trial, and I will explain to you the legal principles that
21 must guide you in your decisions. You must follow that law
22 whether you agree with it or not.

23 Patent Video.

24 This case involves a dispute related to United
25 States patents. Before summarizing the positions of the

1 parties and the issues involved in the dispute, I am going
2 to show a 17-minute video as an introduction to the patent
3 system. It contains background information to help you
4 understand what patents are, why we have them, the role of
5 the Patent Office, and why disputes over patents arise.
6 This was prepared by the government, not by the parties.
7 The video references a sample patent that you will find in
8 your notebooks. Also, many of the terms that are used in
9 the video are contained in a glossary of patent terms in
10 your notebooks. Please feel free to refer to this glossary
11 throughout the trial.

12 Do we have the juror notebooks?

13 MR. DESMARAIS: Yes, Your Honor.

14 THE COURT: Okay. We will pass those out to you
15 at this point.

16 You can hand them to Ms. Ghione, please.

17 MR. DESMARAIS: Yes, Your Honor.

18 (Juror notebooks passed out.)

19 THE COURT: Ladies and gentlemen, I'll talk more
20 about the notebooks a little bit later but it does have some
21 of the materials in it that will be referenced in this video.

22 Does everybody have one? One more?

23 (One last juror notebook passed out.)

24 THE COURT: Thank you. All right. Ms. Ghione,
25 I'll ask you to dim the lights. And once she has done that,

1 we'll then play the video, please.

2 Thank you.

3 (Patent video played as follows.)

4 JUDGE FOGEL: Hello. I'm Jeremy Fogel. I've
5 been a United States District Judge since 1998, and I'm now
6 the Director of the Federal Judicial Center.

7 As you probably know by now, this is a patent
8 case, so you may be wondering, how can I sit in judgment on
9 a case like this when I'm not entirely sure what a patent
10 is? We hope to answer that concern with this brief video,
11 which will give you some of the background needed to do your
12 job.

13 This case will involve some special issues that
14 the Judge and lawyers will explain to you, but all patent
15 cases involve some basics that you will learn about.

16 This video will discuss what patents are, why we
17 have them, how people get them, and why there are disputes
18 that require us to call in a jury like you. We'll also show
19 you what patents look like.

20 The United States Constitution gives Congress
21 the power to pass laws relating to patents. Article 1,
22 Section 8, Clause 8 allows Congress to promote the progress
23 of science and useful arts by securing for limited times to
24 authors and inventors the exclusive right to their
25 respective writings and discoveries.

1 A patent, then, is an official grant by the
2 United States Government that gives its owners certain
3 rights to an invention. Those include the right to stop
4 others from making, using, selling, or offering for sale the
5 invention that is claimed in the patent.

6 A patent lasts for a specific period of time,
7 usually 20 years from the date that the application is filed
8 by the inventor. But because it takes an average of three
9 years for the Patent and Trademark Office to act on the
10 application, the effective life of a patent is closer to
11 17 years.

12 A patent represents a bargain made between the
13 government and the inventor. In return for the right to
14 prevent others from using the invention, the inventor must
15 enhance the public knowledge, or what we sometimes call
16 the state of the art, by adding something new and useful
17 to it.

18 A famous example is Thomas Edison's invention of
19 a light bulb. Harnessing electrical power for illumination
20 transformed society and led to many other important break-
21 throughs. During the lifetime of the patent, its disclosure
22 may inspire new inventions, and after it expires, the
23 invention is free for anyone to use. It is this combination
24 of something new and valuable to the public that justifies
25 granting time-limited patent protection to the inventor.

1 A patent is in many ways like a deed to a piece
2 of property. It grants the owner the right to keep people
3 off the property or to charge them a fee, like rent, for
4 using it. And just as a deed indicates boundaries defining
5 the landowner's property, a patent claim defines the
6 patentee's domain.

7 The patent system works because the inventor is
8 required to describe the invention in clear and specific
9 terms so that the public knows what the boundaries of the
10 invention are. Once a patent is issued by the government,
11 it becomes available for public inspection. And that way,
12 anyone who learns of a patent can read it and understand
13 exactly what the inventor invented and the limits of the
14 patent set forth in the claims.

15 Now that we understand what a patent is, let's
16 take a closer look at term "invention." An invention is a
17 new way of solving a problem for a useful new machine,
18 manufacture, or composition of matter.

19 The patent process begins in the mind of the
20 inventor and, in particular, when the invention is
21 formulated in the mind of the inventor. Patent lawyers call
22 this "conception." This is when the idea occurs to the
23 inventor clearly enough that he or she can write it down and
24 explain it to someone.

25 To qualify for a patent, the invention needs to

1 be new and useful. Also, it must not be obvious to one of
2 ordinary skill in the field. If the inventor believes these
3 requirements are met, he or she will prepare an application
4 for filing with the Patent and Trademark Office, whose
5 headquarters are in Alexandria, Virginia, just outside of
6 Washington, D.C.

7 The Patent and Trademark Office, often called
8 the PTO, is the agency of the federal government whose
9 job it is to examine patent applications to make sure they
10 were in proper form and comply with the requirements of the
11 law.

12 The inventor can prepare an application for
13 filing with the PTO, but usually it is drafted by a patent
14 attorney or a patent agent who specializes in what is called
15 prosecuting patent applications. That is, the process by
16 which they are evaluated.

17 The attorney or agent works with the inventor
18 to be sure the invention is described and claimed in a way
19 that complies with the law and the regulations of the PTO.
20 98 percent of patent applications are made online using the
21 PTO's electronic filing system, although a few paper
22 applications are still made.

23 When the PTO receives the inventor's
24 application, it is first checked to see if it is complete
25 and complies with all the PTO's application requirements.

1 It then assigns the submission to a Patent Examiner, a
2 staff person with a background in the field or art the
3 invention falls within to evaluate the application and
4 decide whether a patent can be granted.

5 You've been given a sample patent to refer to as
6 you watch this video, so you already have a sense of what a
7 patent looks like, but now let's take a closer look at the
8 three main parts of a patent.

9 To begin with, there are some basic identifying
10 information on the first page. This material is highlighted
11 in your handout. On the upper right side of the page is the
12 number assigned to the patent by the PTO and on the left
13 side is a title that describes the invention and the names
14 of the inventors and sometimes the company to whom they've
15 assigned the patent. Also on the left is the date when the
16 patent application was filed, and back on the right, the
17 date when the patent was issued.

18 There also is more detailed information on the
19 first page, including a list of numbers following the
20 caption "Field of Search." These numbers identify
21 previously issued patents the Examiner looked at or searched
22 to make sure the applicant's claimed invention really is
23 something new, not obvious, and thus patentable.

24 Also listed on the first page is what we call
25 references. That is, previous patents or articles that

1 describe the technology or prior art known at the time the
2 application was filed. It may seem strange to you that we
3 call this pre-existing technology prior art even though it
4 has nothing to do with artists.

5 We use the word "art" in its historical sense
6 to include inventions and other subject matter reasonably
7 related to the claimed invention. We also refer to the
8 latest technology as state of the art, and we say of someone
9 who can understand and apply the technology that he or she
10 is skilled in the art.

11 The second major part of the patent is what we
12 call the specification or written description. As is the
13 case in your sample, it is usually the longest part of the
14 patent. It includes an abstract, which is a brief summary
15 of the invention. A background section describes the nature
16 of the problem the invention is supposed to solve. One or
17 more drawings, called figures, that illustrate various
18 aspects of the application, and a detailed description of
19 one or more embodiments of the invention.

20 An embodiment is a specific device or method
21 that uses the invention, such as a particular form of light
22 bulb.

23 The third and most important part of the patent
24 is the claims. These are the numbered paragraphs that
25 appear at the end. The claims are what give the public

1 notice of the boundaries of the invention. They're similar
2 to the description of property you may have seen in a deed,
3 referring to precise measurements taken on the ground.

4 The Judge will instruct you further on how any
5 technical or ambiguous terms in the patent claims should be
6 understood.

7 Now that we've discussed the main parts of a
8 patent, let's look at how the PTO processes patent
9 applications, what we referred to earlier as patent
10 prosecution of an application. This process begins when the
11 inventor's application arrives at the PTO. There, it
12 receives a filing date. Under the American Invents Act of
13 2011, filing dates will determine who is awarded the patent
14 if there are competing valid applications.

15 In 2012, the PTO received nearly 600,000 patent
16 applications and issued more than 270,000 patents.

17 After determining that the application is
18 complete, the receiving branch also decides what field of
19 technology an application relates to and assigns it to the
20 appropriate examining group. In order to make that
21 decision, the Patent Examiner usually looks at patents that
22 have been issued previously in the same or closely related
23 fields of art. The Examiner has computer databases that
24 contain information used to accomplish this task.

25 Another part of the job is to decide if the

1 inventor's description of the invention is complete and
2 clear enough to meet the requirements for a patent,
3 including the requirement that the description enables
4 someone of ordinary skill in the field to actually make and
5 use it.

6 However, because the job of examining so many
7 applications is challenging, the law requires the applicant
8 to tell the Examiner whatever he or she knows about the
9 prior art that might be important to the Examiner's decision
10 on whether to allow the patent. We call this the
11 applicant's duty of candor.

12 One way the applicant can satisfy this duty is
13 by bringing pertinent prior art to the attention of the
14 Examiner, either in the original application, or in other
15 submissions called Information Disclosure Statements. In
16 this way, the decisions of the Examiner are based on both
17 the information provided by the applicant and on the
18 information the Examiner finds during his or her prior art
19 search.

20 Sometimes the Examiner concludes that the
21 application meets all the requirements we've discussed and
22 allows the patent to issue at this first stage, but more
23 frequently the Examiner will reject the application as
24 deficient in some respect. This decision will be
25 communicated by the Examiner in what is called an Office

1 Action, which is a preliminary notice to the applicant of
2 what the Examiner finds insufficient or unpatentable. For
3 example, the Examiner may reject certain claims as being
4 unpatentable because a journal article written and published
5 by another person prior to the effective filing date of
6 the patent application disclosed what the applicant was
7 currently claiming. At that point, the applicant prepares a
8 written response, either agreeing or disagreeing with the
9 Examiner.

10 An applicant who agrees with the Examiner can
11 suggest amendments to the application, designed to overcome
12 the Examiner's rejection. Alternatively, an applicant who
13 disagrees with the Examiner's Office Action can explain the
14 reasons for the disagreement.

15 This exchange of Office Actions and responses
16 goes on until the Examiner issues a Final Office Action,
17 which may reject or allow some or all of the applicant's
18 claims. The overall process is referred to as the
19 prosecution history of the application.

20 The written incoming and outgoing correspondence
21 between the PTO Examiner and the applicant is also called
22 the file wrapper. In the past, these file wrappers were all
23 in paper form as were the submitted applications. Now they
24 are most often electronic and may occasionally be paper as
25 well.

1 Most patent applications filed on or after
2 November 29th, 2000 are published by the PTO 18 months after
3 the inventor has filed his or her application so that the
4 public may inspect it.

5 Once a final PTO Office Action has occurred
6 and one or more claims have been allowed, the applicant is
7 required to pay an issuance fee and the patent is printed.
8 Then, on the date shown on the upper right-hand corner, the
9 first page of the patent, it is issued by the PTO and the
10 inventor receives all the rights of the patent. That date
11 is highlighted on your sample.

12 Once a patent has issued, the inventor or the
13 person or company the inventor has assigned a patent to can
14 enforce the patent against anyone who uses the invention
15 without permission. We call such unlawful use infringement,
16 but the PTO and its Examiners have no jurisdiction over
17 questions relating to infringement of patents. If there is
18 a dispute about infringement, it is brought to the Court to
19 decide.

20 Sometimes in a court case you are also asked to
21 decide about validity. That is whether the patent should
22 have been allowed at all by the PTO. A party accused of
23 infringement is entitled to challenge whether the asserted
24 patent claims are sufficiently new or nonobvious in light of
25 the prior art or whether other requirements of patentability

1 have been met. In other words, a defense to an infringement
2 lawsuit is that the patent in question is invalid.

3 You may wonder why it is that you would be asked
4 to consider such things when the patent has already been
5 reviewed by a Government Examiner. There are several
6 reasons for this.

7 First, there may be facts or arguments that the
8 Examiner did not consider, such as prior art that was not
9 located by the PTO or provided by the applicant. In
10 addition, there is of course the possibility that mistakes
11 were made or important information overlooked. Examiners
12 have a lot of work to do and no process is perfect.

13 Also, unlike a court proceeding, prosecution of
14 a patent application takes place without input from people
15 who might later be accused of infringement, so it is
16 important that we provide a chance for someone who is
17 accused of infringement to challenge the patent in court.

18 In deciding issues of infringement and validity,
19 it is your job to decide the facts of the case. The
20 Judge will instruct you about the law, which may include
21 the meaning of certain words or phrases contained in the
22 patent.

23 So it is your primary duty as jurors to resolve
24 any factual disputes and in some cases, such as infringement
25 and validity, to apply the law to those facts. To prove

1 infringement, the patentholder must persuade you by what is
2 called a preponderance of the evidence relating to the facts
3 of the case that the patent has been infringed.

4 To prove invalidity, the alleged infringer must
5 persuade you by what is called clear and convincing evidence
6 that the patent is invalid.

7 The judge in your case will explain these and
8 other terms and provide additional specific instructions at
9 the appropriate time.

10 Good luck with your task, and thank you for your
11 service.

12 (End of video.)

13 THE COURT: We'll bring the lights back up.

14 Ladies and gentlemen, I'm going to pick up
15 where I left off in reading the preliminary instructions.
16 I'm on page 2 in a section called The Parties and Their
17 Contentions.

18 The plaintiff in this case is International
19 Business Machines corporation, or "IBM." The defendant in
20 this case is Groupon Inc. IBM contends that Groupon
21 infringes four U.S. patents, and that Groupon's infringement
22 is willful. Those patents are: No. 5,796,967; No.
23 7,072,849, No. 5,961,601 and No. 7,631,346. Copies of each
24 of the patents have been given to you along with these
25 preliminary instructions. Patents are usually referred to

1 by these three digits. Patent No. 5,796,967 can be referred
2 to as "the '967 patent." Patent No. 7,072,849 can be
3 referred to as "the '849 patent" and so forth. IBM contends
4 that it is entitled to damages to compensate IBM for
5 Groupon's infringement.

6 Groupon denies that it infringes the
7 patents-in-suit and denies that IBM is entitled to any
8 damages in this action. Groupon also contends that the
9 patents-in-suit are invalid, and that IBM is barred from
10 asserting the '346 patent because IBM granted patent
11 licenses to third parties.

12 Overview of the Applicable Law.

13 In deciding the issues I just described, you
14 will be asked to consider specific legal standards. I will
15 give you an overview of those standards now and will review
16 them in more detail before the case is submitted to you for
17 your verdict.

18 You will be asked to decide whether Groupon has
19 infringed the asserted claims of the patents-in-suit.
20 Infringement is asserted on a claim-by-claim basis.
21 Therefore, there may be infringement as to one claim, but
22 not infringement as to another. There are a few different
23 ways that a patent may be infringed. I will explain the
24 requirements for each of these types of infringement to you
25 in detail at the conclusion of the case. In general,

1 however, Groupon may infringe the patents-in-suit by making,
2 using, selling or offering for sale in the United States or
3 by importing into the United States a product or by using a
4 method meeting all the requirements or steps of a claim of
5 the patents-in-suit.

6 If you have determined that one or more of the
7 asserted patents are infringed by Groupon, then you will
8 need to determine if that infringement was willful. I will
9 provide you more direct instructions on how to determine
10 that at the end of the trial.

11 You will be asked to decide whether IBM's
12 infringement claims for the '346 patent are barred because
13 IBM has granted licenses to its patents to third parties.

14 You will be asked to decide whether the
15 patents-in-suit are invalid. A patent may be invalid for a
16 number of reasons, including because the claimed subject
17 matter that is not new or is obvious. Like infringement,
18 invalidity is assessed on a claim-by-claim basis.
19 Therefore, there may be invalidity as to one claim but not
20 as to another. A claim is invalid if all of its
21 requirements are present in a single previous device or
22 method or sufficiently described in a single previous
23 printed publication or patent. In this situation a claim is
24 said to be anticipated by prior art. The claim is also
25 invalid if it would have been obvious to a person of

1 ordinary skill in the field of technology of the patent at
2 the relevant time. You will need to consider a number of
3 questions in deciding whether the invention or inventions
4 claimed in the patents-in-suit are obvious. I will provide
5 you detailed instructions on these questions at the
6 conclusion of the case.

7 If you decide that any claim of the
8 patents-in-suit has been infringed, is not invalid, and IBM
9 is not barred from asserting it against Groupon, then you
10 will need to decide any money damages to be awarded to IBM
11 to compensate it for the infringement. A damages award
12 should put IBM in approximately the same financial position
13 that it would have been in had the infringement not
14 occurred. In this case, IBM seeks a reasonable royalty. A
15 reasonable royalty is the amount of royalty payment that a
16 patent holder and the alleged infringer would have agreed to
17 in a hypothetical negotiation taking place at a time prior
18 to when the infringement first began. Any damages you may
19 award are not meant to punish Groupon. I will give you more
20 detailed instructions on the calculation of damages at the
21 conclusion of the case.

22 General Guidance Regarding Patents.

23 Although you have heard much of this in the
24 video, I will now give you a general overview of what a
25 patent is and how one is obtained.

1 A. Constitutional Basis for Patents Granted.

2 The United States Constitution, Article I,
3 Section 8 grants the Congress of the United States the power
4 to enact laws "to promote the progress of science and useful
5 arts, by securing for limited times to authors and inventors
6 the exclusive right to their respective writings and
7 discoveries."

8 B. Exclusionary Right and Term of a Patent.

9 The United States Patent and Trademark Office is
10 responsible for reviewing patent applications and granting
11 patents. Once the Patent Office or USPTO has issued a
12 patent, the patent owner has a right to exclude others from
13 making, using, selling, or offering for sale the invention
14 throughout the United States, or from importing the
15 invention into the United States for the length of the
16 patent term. A person who, without the patent owner's
17 authority makes, uses, sells, offers to sell or imports a
18 product that is covered by one or more claims of a valid
19 patent infringes the patent.

20 C. The Parts of a Patent.

21 I will next briefly describe the parts of the
22 patent and some of the procedures followed by those
23 attempting to obtain patents. Many of the terms I will use
24 in this description are contained in the glossary of patent
25 terms I have given you along with a copy of these

1 preliminary instructions. Feel free to refer to the
2 glossary throughout the trial. There is a copy of the
3 glossary in the last couple of pages of these instructions.

4 For an invention to be patentable, it must be
5 new, useful and, at the time the invention was made must not
6 have been obvious to a person having ordinary skill in the
7 art to which the subject matter pertains.

8 Under the patent laws, the Patent Office
9 examines patent applications and issues patents. A person
10 applying for a patent must include a number of items in his
11 or her application, including: (1) a detailed description
12 of the inventions in terms sufficiently full, clear,
13 concise, and exact to enable any person skilled in the art
14 to which the invention pertains to make and use the
15 invention; and (2) one or more claims.

16 The application includes a written description
17 of the invention called a specification that may include
18 drawings that illustrate the invention. The specification
19 concludes with one or more claims that particularly and
20 distinctly define the subject matter that the inventor
21 regards as his or her invention.

22 When a patent application is received at the
23 Patent Office, it is assigned to an examiner who examines
24 the application, including the claims, to determine whether
25 the application complies with the requirements of the U.S.

1 patent law. The examiner reviews the prior work of others
2 in the form of files of patents and publications. This type
3 of material is called "prior art." Prior art is generally
4 technical information and knowledge that was known to the
5 public either before the invention by the applicant or more
6 than one year before the filing date of the application.
7 Documents found in the search of prior art are called
8 references. In conducting a search of prior art, the
9 examiner notes in writing on the file the classes or
10 subclasses of art searched.

11 The compilation of the papers concerning the
12 proceedings before the patent office is called the
13 prosecution history, file wrapper or file history.

14 The examiner may reject the patent application
15 claims if he or she believes that they are not patentable in
16 light of the prior art or because the patent specification
17 does not adequately describe the claimed invention. The
18 applicant may then amend the claims to respond to the
19 examiner's rejection. If, after reviewing the prior art
20 maintained at the Patent Office or provided by the
21 application to the Patent Office during prosecution of the
22 application, the examiner concludes that the claims
23 presented by the applicant define the applicant's claimed
24 invention over the most relevant prior art in a manner that
25 is patentable and that the patent meets the other

1 requirements for patentability, then the application is
2 granted as a U.S. patent.

3 D. Infringement Disputes and Invalidity.

4 The Patent Office and its Examiners do not
5 decide infringement issues. If there is a dispute about
6 infringement, it is brought to the Court to decide. Here,
7 you are also asked to decide about validity -- that is,
8 whether the patent should have been allowed by the patent
9 office. A party accused of infringement is entitled to
10 challenge whether the asserted patent claims are
11 sufficiently new or nonobvious in light of the prior art or
12 whether the other requirements of patentability have been
13 met. In other words, a defense to an infringement lawsuit
14 is that the patent in question is invalid.

15 Duties of the Jury.

16 Let me now turn to the general rules that will
17 govern the discharge of your duties as jurors in this case.
18 It will be your duty to find what the facts are from the
19 evidence as presented at the trial. You and you alone will
20 be the judges of the facts. You will have to apply those
21 facts to the law as I will instruct you at the close of the
22 evidence. You must follow that law whether you agree with
23 it or not.

24 In addition to instructing you about the law, at
25 the close of the evidence, I will provide you with

1 instructions as to what the claims of the patents mean.
2 Again, of course, you are bound by your oath as jurors to
3 follow these and all the instructions that I give you even
4 if you personally disagree with them. All the instructions
5 are important, and you should consider them together as a
6 whole.

7 You are the judges of the facts. I will decide
8 which rules of law apply to this case.

9 Perform these duties fairly. Do not let any
10 bias, sympathy, or prejudice that you may feel toward one
11 side or the other influence your decision in any way. Also,
12 do not let anything I say or do during the trial influence
13 you. Nothing I say or do is intended to indicate, or should
14 be taken by you as indicating, what your verdict should be.

15 Evidence.

16 The evidence from which you will find the facts
17 will consist of the testimony of witnesses and the documents
18 and other things admitted into evidence. The evidence may
19 also include certain facts agreed to by the parties or that
20 I may instruct you to find.

21 Certain things are not evidence. I will list
22 them for you now.

23 1. Statements, arguments, and questions by
24 lawyers are not evidence.

25 2. Objections to questions are not evidence.

1 Lawyers have an obligation to their clients to make an
2 objection when they believe testimony or exhibits being
3 offered are not admissible under the rules of evidence. You
4 should not be influenced by a lawyer's objection or by my
5 ruling on the objection. If I sustain or uphold the
6 objection and find the matter is not admissible, you should
7 ignore the question or document. If I overrule an objection
8 and allow the matter into evidence, you should treat the
9 testimony or document like any evidence. If I instruct you
10 during the trial that some item of evidence is admitted for
11 a limited purpose, you must follow that instruction and
12 consider that evidence for that purpose only. If this
13 occurs during the trial, I will try to clarify this for you
14 at that time.

15 3. Testimony that the Court has excluded or
16 told you to disregard is not evidence and must not be
17 considered.

18 4. During trial you will be shown charts and
19 animations to help illustrate the testimony of the
20 witnesses. These illustrative exhibits called
21 "demonstrative exhibits" are not admitted into evidence and
22 should not be considered as evidence.

23 5. Anything you see or hear outside the
24 courtroom is not evidence and must be disregarded. You are
25 to decide this case solely on the evidence presented here in

1 the courtroom.

2 Top of page nine, Direct and Circumstantial
3 Evidence.

4 There are two kinds of evidence, direct and
5 circumstantial. Direct evidence is direct proof of a fact
6 such as the testimony of an eye witness. If a witness
7 testified that he saw it raining outside and you believed
8 him, that would be direct evidence that it was raining.

9 Circumstantial evidence is proof of facts from
10 which you may infer or conclude that other facts exist. If
11 someone walked into a courtroom wearing a raincoat covered
12 in drops of water, and carrying a wet umbrella, that would
13 be circumstantial evidence from which you could conclude
14 that it was raining outside.

15 As a general rule, the law makes no distinction
16 between these two types of evidence, but simply requires
17 that you find facts from all the evidence in the case,
18 whether direct or circumstantial or a combination of the
19 two. In judging the facts, it will be up to you to decide
20 which witnesses to believe, which witnesses not to believe,
21 and how much of any witness's testimony to accept or reject.

22 Credibility of Witnesses Weighing Conflicting
23 Testimony.

24 You are the sole judges of each witness's
25 credibility. You should consider each witnesses' means of

1 knowledge; strength of memory; opportunity to observe; how
2 reasonable or unreasonable the testimony is; whether it is
3 consistent or inconsistent; whether it has been
4 contradicted; the witness's bias, prejudices or interests;
5 the witness's manner or demeanor on the witness stand; and
6 all circumstances that, according to the evidence could
7 affect the credibility of the testimony.

8 If you find the testimony to be contradictory,
9 you must try to reconcile it, if reasonable possible, so as
10 to make one harmonious story of it all. But if you can't do
11 this, then it is your duty and privilege to believe the
12 testimony that, in your judgment, is most believable and
13 disregard any testimony that, in your judgment, is not
14 believable. This instruction applies to the testimony of
15 all witnesses, including expert witnesses.

16 Expert Testimony.

17 Expert testimony is testimony from a person who
18 has a special skill or knowledge in some science, profession
19 and business. This skill or knowledge is not common to the
20 average person but has been acquired by the expert through
21 special study or experience. In weighing expert testimony,
22 you may consider the expert's qualifications, the reasons
23 for the expert's opinions, and the reliability of the
24 information supporting the expert's opinions as well as the
25 factors that I have previously mentioned for weighing

1 testimony of any other witness. Expert testimony should
2 receive whatever weight and credit you think appropriate,
3 given all the other evidence in the case. You are free to
4 accept or reject the testimony of experts, just as with any
5 other witness.

6 Burden of Proof.

7 In any legal action, facts must be proven by a
8 required standard of evidence known as the "burden of
9 proof." In a patent case such as this, there are two
10 different burdens of proof that are used. The first is
11 called "preponderance of the evidence." The second is
12 called "clear and convincing evidence."

13 A party asserting patent infringement has the
14 burden of proving infringement by a preponderance of the
15 evidence. That means the party asserting infringement has
16 to produce evidence that, when considered in light of all of
17 the facts, leads you to believe that what that party claims
18 is more likely true than not. To put it differently, if you
19 were to put the party's evidence on opposite sides of the
20 scale, the evidence supporting the claims of the party
21 asserting infringement must make the scales tip somewhat on
22 its side. If it does not and the scale remains equal or
23 tips the other way, then that party failed to prove its
24 infringement claims. A party asserting willful infringement
25 also has the burden of proving that any infringement was

1 willful by a preponderance of the evidence. And it has the
2 burden to establish the amount of damages it seeks by a
3 preponderance of the evidence.

4 A party challenging the validity of a patent has
5 the burden of proving by clear and convincing evidence that
6 the patent is invalid. Clear and convincing evidence is
7 evidence that produces an abiding conviction that the truth
8 of a factual contention is highly probably. Proof by clear
9 and convincing evidence is, thus, a higher burden than proof
10 by a preponderance of the evidence.

11 Some of you may have heard the phrase "proof
12 beyond a reasonable doubt." That burden of proof applies
13 only in criminal cases and has nothing to do with a civil
14 case like this one. You should therefore not consider it in
15 this case.

16 Summary of the Patent Issues.

17 In this case, you must decide several things
18 according to the instructions I will give you at the end of
19 the trial. Those instructions will repeat this summary and
20 will provide more detail. You must decide:

21 1. Whether IBM has proven by a preponderance
22 of the evidence that Groupon infringes one or more of the
23 asserted claims of the patents in suit and, if so, whether
24 it does so willfully;

25 2. Whether Groupon has proven by clear and

1 convincing evidence that one or more of the asserted claims
2 of the patents in suit are invalid;

3 3. Whether Groupon has proven by a
4 preponderance of the evidence that it had an implied license
5 to practice the '346 patent and/or that IBM's rights to
6 enforce the '346 patent against Groupon were exhausted. And,

7 4. If you find Groupon has infringed a valid
8 patent, and it had no implied license to practice that
9 patent and IBM's right to assert that patent has not been
10 exhausted, the amount of damages that IBM has proven, by a
11 preponderance of the evidence, that should be awarded to IBM
12 as compensation for that infringement.

13 Conduct of the Jury.

14 Now a few words about your conduct as jurors.

15 First, I instruct you that during the trial you
16 are not to discuss the case with anyone or permit anyone
17 to discuss it with you. Until you retire to the jury room
18 at the end of the case to deliberate on your verdict, you
19 simply are not to talk about this case. If any lawyer,
20 party, or witness does not speak to you when you pass in the
21 hall, ride the elevator, or the like, remember it is because
22 they are not supposed to talk with you, nor you with them.
23 In this way, any unwarranted and unnecessary suspicion about
24 your fairness can be avoided. If anyone should try to talk
25 to you about the case, bring it to the Court's attention

1 promptly.

2 Second, do not read or listen to anything
3 touching on this case in any way. By that I mean that if
4 there is a newspaper or Internet article or television or
5 radio report relating to this case, do not read the article
6 or watch or listen to the report.

7 Third, do not try to do any research or
8 investigate the case on your own. Let me elaborate. During
9 the course of the trial, you must not conduct any
10 independent research about the case, the matters in the
11 case, and the individuals or entities involved in the case.
12 In other words, you should not consult dictionaries or
13 reference materials, search the Internet, websites, blogs,
14 or any other print, electronic or any other means. In
15 particular, you may not access or use Groupon, whether
16 through Groupon's website or through Groupon's mobile apps.
17 Also, again, should there happen to be a newspaper article
18 or television or radio report relating to this case, do not
19 read the article or watch or listen to the report. It is
20 important that you decide this case based solely another
21 evidence present in the courtroom. Please do not try to find
22 out Freedom of Information from any or sources.

23 I know that many of you use cellphones, tablets,
24 iPhones, the Internet, and other tools of technology. You
25 also must not talk to anyone about this case or use these

1 tools to communicate electronically with anyone about the
2 case. This includes your family and friends. You may not
3 communicate with anyone about the case on your cellphone,
4 through e-mail, your tablet or iPhone, text messages, on
5 Twitter, through any blog or website, including any Internet
6 chat room, or by way of any other social networking
7 websites, including Facebook, Twitter, LinkedIn, and
8 YouTube.

9 During the trial, you may, but are not required
10 to, take notes regarding testimony; for example, exhibit
11 numbers, impressions of witnesses, or other things related
12 to the proceedings. A word of caution is in order. There
13 is generally I think a tendency to attach undue importance
14 to matters which one has written down. Some testimony which
15 is considered unimportant at the time presented, and thus
16 not written down, takes on greater importance later in the
17 trial in light of all the evidence presented. Therefore,
18 you are instructed that your notes are only a tool to aid in
19 your own individual memory and you should not compare your
20 notes with other jurors in determining the content of any
21 testimony or in evaluating the importance of any evidence.
22 Your notes are not evidence and are by no means a complete
23 outline of the proceedings or a list of the highlights of
24 the trial. Also, keep in mind that you will not have a
25 transcript of the testimony to review. So, above all, your

1 memory will be your greatest asset when it comes time to
2 deliberate and render a decision in this case.

3 If you do take notes, you must leave them in the
4 jury deliberation room which is secured at the end of each
5 day. And remember that they are for your own personal use.

6 Finally, do not form any opinion until all the
7 evidence is in. Keep an open mind until you start your
8 deliberations at the end of the case -- I will give you
9 detailed instructions on the law at the end of the case, and
10 those instructions will control your deliberations and de.

11 Juror Notebook, as I mentioned.

12 To assist in your deliberations, you have been
13 provided with a notebook that contains the following:

14 Glossary of patent terms.

15 Sample patent.

16 The Court's claim constructions, copies of the
17 patents in suit.

18 Pictures of witnesses.

19 These materials have been jointly submitted by
20 the parties. Please refer to these materials to assist you
21 during the trial.

22 Sidebars.

23 During the trial it may be necessary for me to
24 talk with the lawyers out of your hearing by having a bench
25 conference, which is also called a sidebar. If that

1 happens, please be patient.

2 We are not trying to keep important information
3 from you. These conferences are necessary for me to fulfill
4 my responsibility to be sure that evidence is presented to
5 you correctly under the law.

6 We will, of course, do what we can to keep the
7 number and length of these conferences to a minimum. If you
8 would like to stand or stretch or walk around the jury box
9 while we are at sidebar, you should feel free to do so.

10 I may not always grant an attorney's request for
11 a sidebar. Do not consider my granting or denying a request
12 for a conference as an indication of my opinion of the case
13 or what of what your verdict should be.

14 Course of the Trial.

15 The case will now begin.

16 First, IBM may make an opening statement
17 outlining its case. Then Groupon may make an opening
18 statement outlining its case. Opening statements are not
19 evidence; their only purpose is to help you understand what
20 the evidence will be.

21 Next, the parties will present their evidence.
22 IBM will first introduce its evidence that it believes
23 supports its claim that Groupon infringes the patents-in-suit
24 and the damages that it is entitled to. When IBM is finished,
25 group will introduce evidence to defend against IBM's

1 infringement and damages claims and will introduce evidence
2 that it believes supports its claims that the patents-in-suit
3 are invalid and that it was licensed to practice one of the
4 patents and IBM has exhausted its rights to assert that
5 patent against Groupon. IBM will then have the opportunity to
6 introduce evidence to defend Groupon's claims of invalidity,
7 and Groupon's claims that it was licensed to practice one of
8 the patents and that IBM has exhausted its rights to assert
9 that patent against Groupon.

10 After all of the evidence is in, the lawyers
11 will present closing arguments. The closing arguments are
12 not evidence. Their purpose is to summarize and interpret
13 the evidence for you, and to tie the evidence into their
14 story. I will give you instructions on the law and describe
15 for you the matters you must resolve. You will then retire
16 to the jury room to deliberate on your verdict.

17 Trial Schedule.

18 Though you may have heard me say this during the
19 jury selection process, I want to again outline the schedule
20 I expect to maintain during the course of this trial.

21 As I mentioned previously, once trial begins,
22 this case is expected to take up to eight business days to
23 try, between now and Friday, July 27th. We actually should
24 assume its up to ten business days. So that would be
25 between now and next Friday.

1 We will normally begin the day at 9:00 a.m. We
2 will go until around 12:30 p.m. and, after about a half hour
3 break for lunch, continue until 4:30 p.m. There will be a
4 15 minute break in the morning and another 15 minute break
5 in the afternoon.

6 What I have just outlined is the general
7 schedule. It is possible there will be some interruptions
8 as I have to attend to other matters. I already know of
9 some other commitments I have and so I can tell you now that
10 some of our days will be shorter than I just described.
11 I'll list these specifics for you now.

12 Today, Monday, July 2016, we're here until 4:30.

13 Tomorrow, Tuesday, July 17th, we'll be here from
14 9:00 a.m. to 4:30.

15 Wednesday, July 18th, we'll be here from 9:00
16 a.m. only until 1:00 p.m.

17 On Thursday, we'll be here from 9:00 a.m. to
18 4:30 p.m.

19 On Friday, July 20, we'll be here from 9:00 a.m.
20 only to 1:00 p.m.

21 Next Monday, July 23rd and Tuesday, July 24th,
22 we'll be here from 9:00 a.m. to 4:30 p.m.

23 Next Wednesday, July 25th, we'll be here from
24 9:00 a.m. to 1:00 p.m.

25 Next Thursday, July 26th, we'll be here from

1 9:00 a.m. to 3:30 p.m. And,

2 Next Friday, July 27th, 9:00 a.m. to 3:30 p.m.

3 The only significant exception to this schedule
4 may occur when the case is submitted to you for your
5 deliberations. At that point, you will be are permitted to
6 deliberate as late as you wish.

7 Please keep in mind that this is a timed trial.
8 That means I have allocated each party a maximum number of
9 hours in which to present all portions of its case. This
10 allows me to assure you that we expect to be completed with
11 this case by next Friday, July 27th. Of course, you can
12 help me keep us on schedule by being here promptly each
13 morning and being ready to proceed at the end of each break.

14 So that takes me through the instructions.
15 Pages 17 and 18 are where the glossary of patent terms are.
16 I'm not going to read it to you but feel free to refer to it
17 as you wish.

18 Just a couple other quick instructions. I
19 indicated to you we try to take in general one break in the
20 morning and one in the afternoon plus a lunch break of about
21 a half hour. We will be able to give you lunch on all
22 future days of this trial, so we'll talk about that.
23 Tomorrow morning, we'll have menus for you to think about to
24 buy your lunch.

25 If it turns out you need additional breaks,

1 maybe you need the restroom, maybe you are getting a little
2 tired, maybe it's getting too hot in here, just raise your
3 hand or do something to get our attention and we can take a
4 break just as soon as possible. Okay?

5 Additionally, the temperature in here feels to
6 me like it has gotten hotter today. I apologize. We do not
7 actually control the temperature. We beg certain other
8 people to get it as good as they can. Sometimes in the
9 course of a day it's too hot and at other times in that same
10 day it's too cold. We're usually able to sense it and try
11 and get it fixed. If you want to let us know if you are
12 getting uncomfortable, please do. The best strategy is to
13 have layers with you and to feel free to take things off and
14 put them on over the course of the day.

15 So that completes the instructions. We'll now
16 call on IBM to do their opening statements.

17 MR. DESMARAIS: Thank you, Your Honor.

18 May it please the Court, ladies and gentlemen of
19 the jury.

20 This is a case about a company, Groupon, that
21 refuses to take responsibility for technology it is using.
22 And that technology is owned by IBM. It is patented by IBM
23 and it is owned by IBM.

24 Groupon, as you will learn at the trial, was
25 relatively late to the e-commerce revolution. They didn't

1 launch their website until 2008 and they didn't launch their
2 mobile app until 2010. By then, the likes of Amazon and
3 Google and Facebook were already big.

4 Groupon came up with a different approach.
5 Their website was offering discount deals to consumers who
6 want discounted merchandise and services. That's where the
7 name comes from is sort of a group coupon. And it was a
8 cleaver idea, and we don't deny that.

9 But in order for Groupon to launch that service,
10 and to launch it on the Internet and to make it successful,
11 they had to build on what came before. There are several
12 things they had to do:

13 They had to figure out how to present their
14 software or their applications in a fast and efficient way.

15 Another thing they had to do? They had to
16 figure out how to present advertising. Advertising takes a
17 lot of data and they had to figure out how to send that over
18 the Internet in a fast and efficient way.

19 They had to figure out how to get users signed
20 up easily, efficiently so the users would come on the
21 website, and then to deal with the transactions that they
22 were going to do with those users in a fast and efficient
23 way.

24 Groupon was not early to e-commerce, and they
25 did not invent any of these things I just told you about.

1 And these things are important and they're required.

2 So what did Groupon do? They implemented them
3 anyway. They implemented them anyway without asking for
4 permission and without taking a license.

5 Now, before Groupon existed, in fact, before
6 Amazon existed, before Facebook existed, before Google
7 existed, engineers at IBM were working on how to make
8 e-commerce fast and efficient. And they figured it out, and
9 they patented it. And four of those patents are what this
10 case is about.

11 IBM spends literally billions of dollars every
12 year on research and development to make our lives better,
13 to invent the things we all use and to make our lives
14 easier.

15 Now, they patent these inventions but they don't
16 patent them to exclude people. They make them available to
17 anybody who wants to take a reasonable license. And we're
18 here because Groupon did not take a license.

19 Now, you will learn at this trial -- Your Honor
20 may I put up a pad?

21 THE COURT: You may.

22 If anybody for defense counsel wants to move
23 around to see, you are free to do that.

24 MR. DESMARAIS: You are going to learn at this
25 trial that Amazon took a license from IBM, Google took a

1 license from IBM, Facebook took a license from IBM,
2 Priceline took a license from IBM. So did LinkedIn,
3 Twitter, and many others.

4 Groupon has not. The new kid on the block
5 refuses to take responsibility for the technology it is
6 using but it continues to infringe literally every day,
7 millions of times. That is what this case is about. All
8 IBM wants is a reasonable royalty for the technology that it
9 invented.

10 My name is John Desmarais, and I represent IBM.
11 Working on this trial with me are some of my colleagues,
12 Kareem Oussayef, Laurie Stempler, and Robert Harrits; and
13 there are some others not sitting up here.

14 Also sitting with us throughout the trial will
15 be Dr. Hinton. She is sitting here at the table here,
16 Dr. Hinton. She is one of the inventors on one of the IBM
17 patents in this case and she will be testifying later, and
18 she is going to tell you her invention story.

19 Now, before I get into the details of the case,
20 let me tell you a little bit about who IBM is.

21 THE COURT: You may be using the pad again?

22 MR. DESMARAIS: I am going to use it again, but
23 I can move it aside. And maybe over here, if that is all
24 right.

25 THE COURT: Sure. Just let us know when you are

1 ready to use it again.

2 MR. DESMARAIS: Thank you, Your Honor.

3 This is sort of a snapshot of IBM over time. So
4 IBM started, as you heard, as International Business
5 Machines years ago. They made manual typewriters. Some of
6 you may remember that. But IBM's invention history is
7 storied, like very few other companies in the history of the
8 world.

9 Back in 1944, they made the first computer with
10 Harvard University.

11 In 1956, they invented the disk drives.

12 In 1964, they made the mainframe computer.

13 In 1966, they invented DRAM memory which powers
14 most computers.

15 And also in that year, NASA used IBM computers
16 in its space flights.

17 In 1962, they invented the SABRE system which is
18 airline reservations. And don't worry, I talked to them
19 about that. That system is still not working, but they're
20 working on it.

21 1981, personal computer debuts. Also that year,
22 IBM in their labs invented the notion that you could use
23 lasers on people for surgery.

24 In 1988, Prodigy was launched. This case is
25 about Prodigy and this shows you in the timeline of IBM

1 where that fits. And I'll tell you about Prodigy in a short
2 minute.

3 IBM then launched a laptop computer. In 1997,
4 the Deep Blue Super Computer beat the reigning chess champ
5 of the world. It was mind boggling. The artificial
6 intelligence of that machine was mind boggling. It was
7 widely publicized across the world that a computer beat a
8 chess champion.

9 In 2007 IBM invented quantum computers. In
10 2011, an IBM super computer played jeopardy against humans
11 and beat humans. The artificial intelligence was mind
12 boggling.

13 In 2017, just last year, IBM made computers
14 available to businesses that store information on the
15 quantum state of individual atoms. It's mind boggling what
16 the scientists at IBM can do and what they come up with.

17 So that's a little bit about who IBM is. A lot
18 of that research gets done at the Watson Research Center
19 which is in New York. And there is a picture of it there
20 from Yorktown, New York and Hoffman, New York and this is a
21 figure from one of the patents in the case, a lot of the
22 IBM, some of this stuff I just talked to you about the
23 quantum computing is there and other stuff is there, too.

24 IBM is recognized worldwide for these
25 inventions. NASA gave IBM an certificate of recognition for

1 outstanding contributions to lunar space and science.
2 They're the ten time winner of the U.S. National Medal on
3 Technology and Innovation. The six time winner of the
4 Touring Award on Computer Machinery. There are six Nobel
5 Laureates working in the IBM labs. 20 inductees into the
6 National Inventors Hall of Fame. 19 inductees into the
7 National Academy of Science. And they're a five time winner
8 of the National Medal of Science.

9 As a result of all this effort, IBM spends about
10 \$5.6 billion annually on research and development. As a
11 result of that, every year for the past twenty-five years,
12 they have been granted more patents from the United States
13 Patent Office than any other company in the world.

14 This case is about four of those patents and
15 you'll see them here. You heard about patents in the video.
16 You'll see the patents. You'll have them. They'll be
17 entered into the evidence. They have the seal of the United
18 States Patent Office on them, there is four. Dr. Hinton is
19 the inventor on one of them with others, and Bob Filepp, who
20 will testify as our first witness, is the inventor on two of
21 them.

22 Now, what are those patents about? So I think
23 we have a board on this. It might be easier for me to use
24 the board. So what those patents are about is when a user
25 is working at a terminal, and communicating over a network

1 to servers, there is a couple of things that have to happen.
2 Number one is the applications that the user wants to work
3 on have to come down from the servers through the network to
4 get on to the computer.

5 The first patent, what one of Mr. Filepp's
6 patents, the '967, taught us how to present those
7 applications over a network in a fast and efficient way.
8 And that's complicated. The network Mr. Filepp built at one
9 point got up to two million users at the same time.

10 The second patent in the case, the '849, also
11 one of Mr. Filepp's patents, he's going to be one of our
12 first witnesses is about presenting advertising. The trick
13 with advertising is it takes a lot of data, and to get that
14 data to get over a network and get on to the users when you
15 have, for instance, millions of users, takes up a lot of the
16 space on the network, takes up a lot of work on the server,
17 and how do you do that, how do you get it across fast and
18 efficiently.

19 One of the other patents, the '601 is preserving
20 state information. What that relates to is when the user is
21 talking to the server, you can imagine a server is talking
22 to a lot of people at the same time. If it's a network,
23 there is going to be a lot of them. And what the server and
24 the user have to do is they have to figure out how are we
25 going to have a conversation separate from the server's

1 conversation with the next user and the server's
2 conversation with the other user. So this patent tells us
3 how to preserve the state information between a user and a
4 server so when they're talking, the conversation continues
5 in an intelligent fashion.

6 And the last patent, the '346 on new account
7 creation, this is Dr. Hinton's invention, what that's about
8 and for those of you who do online shopping, I think you'll
9 appreciate this, this one is down to earth for regular
10 people, when you go to a new site, a new service provider
11 and you want to do a transaction, you get confronted with
12 that create an account, you got to put your name and address
13 in there, you got to put your credit card in there. It can
14 be a real pain because you also have to do a user name and
15 password. If you start joining a lot of these different
16 places, you have a lot of user names and lot of passwords,
17 it will drive you crazy. I don't know about you all, but I
18 have a long list of user names and passwords and it's
19 killing me. But Hinton's invention is how to do that for
20 you automatically. So when you go to a new service
21 provider, now what you see, and you probably see this, it
22 might say rather than fill out an application, would you
23 like to join through Facebook, your Facebook account or
24 would you like to join through your Google account or Amazon
25 account.

1 This patent talked about how to get those
2 companies into a federated environment, have them
3 communicate with each other to take the burden off us and
4 have these new account applications created automatically
5 for you, and that was Dr. Hinton's invention.

6 Now, the first two patents, the '967 and the
7 '849, are as I said, Mr. Filepp's patents and he's going to
8 tell you about those. And the work on that started at IBM
9 in 1984. And the notion there was IBM looked ahead and
10 thought this E-Commerce thing is the real deal. This is
11 going to be the next big thing. And boy, were they right.
12 This is in 1984 when they're talking about this.

13 And IBM wasn't in the business of selling goods
14 and services, that's not what their business was. And
15 they're not in the business of creating advertising and
16 making money from advertising. What they were studying was
17 how to architect this thing, how to make the foundation that
18 would make it customers work and the advertising work.
19 Rather than try to be the jack of all trades, they made a
20 partnership with Sears and IBM and CBS. And they called it
21 Trintex. They got in partnership with Sears because Sears
22 provided the retail experience. Sears was a retail shop
23 that sells goods and services. They got involved with CBS
24 so CBS could create the content and the advertising and that
25 sort of thing which is not in the IBM sweet spot. And IBM's

1 business was, you know, provide the know how, figure out how
2 to do it over a network with computers and how to make it
3 work.

4 And the first two patents come out of that. The
5 '967 is a method for presenting applications in an
6 interactive service, and that's an interactive service
7 between a user and a server, how you're going to present
8 those applications. I won't go into the details.
9 Mr. Filepp is going to explain it to you in his testimony.

10 The second of Mr. Filepp's patents, the '849, is
11 a method for presenting advertising in an interactive
12 service. Again, the interactive service is a user talking
13 to a server over a network, and Mr. Filepp will explain to
14 you how complicated it is to present advertising and how he
15 solved that problem. He is going to tell you what was the
16 problem they were confronted and how they solved it.

17 I'll give you a short overview now just to
18 introduce the topic.

19 It used to be the case prior to Mr. Filepp's
20 inventions that when a computer wanted to talk to a server
21 over a network back in the '80's, the terminals are what we
22 called, not so nicely, dumb terminals because they didn't
23 have a lot of intelligence on them, they didn't have a lot
24 of storage on them. So when a user sitting at a terminal
25 wanted to talk over a network to a server, the server had to

1 send everything down to the terminal that the user needed.
2 And when the user wanted to do something, everything had to
3 get sent back and then when the transaction moved to the
4 next phase, the server had to send everything back down.
5 You can imagine if you wanted to make a system like that
6 with a lot of users, you're going to get into a big problem
7 because if every one of those users has to get the entirety
8 of the application sent down to each of them every single
9 time over a network, you're going to clog up the network and
10 you're going to clog up the server and everything is going
11 to break down and backlog.

12 That's where Mr. Filepp came up with his
13 invention, what he thought of is really creative. If you
14 take that terminal and you add some intelligence to the
15 terminal, and you put a memory store or an object store at
16 the terminal, you can solve this problem.

17 And here is how it works. If you take the
18 screen of the terminal and break it into partitions or
19 areas, and then within those areas even smaller pieces
20 called objects or data structures, and you put intelligence
21 at the terminal and you put a memory at the terminal called
22 either a store or an object store or a cache, then when this
23 person wants to do something, they can store locally pieces
24 of the displays, objects of display, they store the objects
25 locally, and then when they need something, the computer

1 checks first in the store, creates the screen and only goes
2 to the network to get the pieces that are missing, the
3 things that have changed, the things that have been updated.
4 That was the key of the invention, we need to break the
5 screen into areas and we need to create the screen from
6 objects and we need to store objects locally and only go
7 across the network to the server when we need something.
8 You guys see this on your computers today, if you watch your
9 computer screen when you load a web page. Sometimes it
10 populates right away, sometimes it populates into a little
11 piece that isn't there yet, your screen is made of objects.
12 That was Mr. Filepp's invention.

13 Now, the patent also, the second patent deals
14 with advertising, this is the figure from the '849 patent.
15 Even back in the '80's when they drafted the patent they
16 were realizing thinking ahead, you know, this network is
17 going to be able to even not just do goods and services,
18 you'll be able to buy your groceries on this network. One
19 of the examples is ABC Apples, apples are good for you,
20 apples cost blank each, how many apples do you want to
21 order. Think about how future looking this was.

22 I don't know if you guys follow Amazon, but
23 Amazon in the recent past acquired Whole Foods and now you
24 can get your apples on Amazon. And IBM thought of that long
25 before Amazon acquired Whole Foods.

1 So it solved the problem of the bottleneck and
2 the storage and the efficiency because now if you have all
3 these terminals and you communicate over a network to a
4 server, if each of those terminals is only loading up parts
5 of the screen that they need to get because the information
6 is old and they get all the rest of it locally, you can put
7 a lot more terminals on the network without making the
8 system crash. And this project was a success.

9 Trintex, which was a combination of Sears, IBM
10 and CBS, changed their name to Prodigy and 1988 they
11 launched a commercial service. It was called Prodigy.
12 That's actually what the screen looked like. It has a space
13 for your ID and your password.

14 Now I'm going to show you one of the
15 advertisements for Prodigy. Keep in mind, this service was
16 launched in 1988. So this was huge, but listen to what they
17 say because it's all come true.

18 (Video played: It makes investing in banking
19 more convenient.

20 Prodigy makes learning more fun.

21 It makes everything more fun.

22 Yeah, lots more fun.

23 It let's me save money on travel. It's like
24 going to the biggest shopping mall in the world. Prodigy
25 gives you the news at the touch of the key. You got to get

1 this thing. This is Prodigy, the online service that you'll
2 access on your home computer over a regular phone line using
3 a modem. You can shop for great values, pay bills without
4 writing checks, learn from an online encyclopedia that's
5 updated quarterly, communicate with people all across the
6 country and more, lots more. For instance, Prodigy service
7 is great for travels. It let's you plan it all right from
8 your home computer. Book your own seats on over 300
9 airlines with Easy Statement. Here is the best part, you
10 can book your seat at the lowest available airfare so you
11 know for sure you're saving money. And Prodigy service
12 makes booking hotel reservations just as easy. You can save
13 50 percent at over 1,500 hotels in the U.S., Canada and
14 Europe and check the weather before you go. On the Prodigy
15 service you can get forecasts for 335 cities worldwide
16 updated continually. For places to eat, things to see,
17 check out the mobile travel guide. If you like to travel,
18 you got to get this.

19 Need another reason why you got to get this
20 thing, shopping. Listen if you like to shop, you'll love
21 shopping on the Prodigy service. Especially the hundreds of
22 exclusive discounts and special offers available only to
23 Prodigy service members. Buy that special guy a designed
24 tailored dress shirt, then send your mom some flowers. In
25 some areas you can even do your grocery shopping and have

1 groceries delivered right to your door. Taking advantage of
2 weekly sales on CD's, tapes videos and more, buy China,
3 silverware, even house gifts from over 60 manufacturers from
4 guaranteed lowest prices. And if you need help for the
5 purchase decision, check Consumer Reports before you start
6 to shop. Prodigy, so many great values on so many items
7 right at your fingertips.

8 (End of video.)

9 MR. DESMARAIS: 1988, think about that. This is
10 what we do today every day. In jury selection some of you
11 say you shop online every single day. IBM built this and
12 created this system in 1988.

13 And they launched the system and at one point it
14 was a big success. At one point they had two million users.
15 Let me put the date in perspective for you just so you can
16 really appreciate the brilliance of the team that Mr. Filepp
17 worked with.

18 Back in 1969, the predecessors to the internet
19 was created. It was called ARPA Net. This was actually a
20 military operation with universities and they were trying to
21 protect the country in case our communications network got
22 knocked out so they made a data network the Army could use
23 to talk in case a nuclear bomb blew out our main
24 communication network.

25 After ARPA was created, some companies tried to

1 make it commercial, AT&T and CBS tried Venture One, Minitel
2 tried to launch a service in France. And right here in
3 1984, Trintex was formed with IBM at the lead in partnership
4 with Sears and CBS. The Prodigy service was launched in
5 1988. Before the worldwide web was even invented, before
6 AOL. Tim Berners-Lee invented today what we call the
7 worldwide web in 1989. AOL 1.0 didn't ship until 1991.
8 Amazon didn't launch until years later, Google until years
9 later and Facebook and Groupon after that. That's how
10 advance that was. It was successful.

11 Prodigy as I said had a service launch at 1.2
12 million users and they proved out they could do this. And
13 then because IBM is not in the retail business as I
14 mentioned and they're not content providers, once they
15 proved they could do it and they built the technology, they
16 sold Prodigy off, but they retained the patents. And the
17 patents as I told you are widely licensed to all the
18 companies that came later and all the companies that are
19 using these ideas.

20 Most big companies have taken licenses to this
21 portfolio, Amazon did, Google did, Facebook did, et cetera.
22 The list is very long. Groupon hasn't. The new kid on the
23 block refuses to take responsibility for using these
24 inventions.

25 The next patent you're going to hear about at

1 this trial is the '601 patent. The '601 is the one about
2 preserving state information. So this is -- and I have a
3 board on this one, too. So the title of the patent is
4 Preserving State Information in a continuing conversation
5 between a client and a server networked via a stateless
6 protocol. What does that mean? Here is a figure from the
7 patent. We have added the color, the figure is black and
8 white. But a client is a user at a terminal, when you're
9 doing your online shopping, communicating over the internet
10 with the stateless protocol to a server, it could be
11 Groupon, could be Facebook, could be Google, can be anybody,
12 when this client is talking to the server over the internet,
13 they have to find a way to keep their conversation between
14 them, because that server is talking to a lot of different
15 people and the protocol on the internet it's stateless which
16 means the server has a hard time trying to figure out how to
17 keep the conversation going between the user and the client,
18 what are they ordering, what do they want, how many shirts
19 do they want, what inventor came up with we can change the
20 protocol by inventing in the communications between the
21 individuals and the servers we can embed in that what are
22 called state variables, the state of the conversation, how
23 many shirts did you order, what was the color, why do you
24 want them delivered. That stuff can be embedded into the
25 communication and preserved in state and it's one of the

1 things that is widely used today in order to make all these
2 E-Commerce transactions work.

3 The next patent is Dr. Hinton that I told you
4 about. This is the automatic account creation. And you
5 guys I'm sure are all familiar with the problem. For every
6 place you go, you got to put in a user name and a password
7 and it will drive you crazy if you're going to a lot of
8 different places on a regular basis.

9 So the invention was let's make this simple for
10 users. And the way it works is if you go to use your
11 account at a service provider and -- not use your account,
12 if you go to a service provider where you don't have an
13 account and you get presented with fill out this account
14 application, how can we streamline that.

15 And the way the patent suggests streaming like
16 that is to have the companies make an agreement between
17 themselves for those that you have an account at and those
18 you don't, and they call that a federated environment. So
19 the companies have to federate and they have to agree to
20 participate. And if they do, then when you go to a new
21 service provider, what happens is what you see today. You
22 can join that new service provider just by saying go look at
23 my Google account, go look at my Facebook account, and go
24 look at my Amazon account.

25 And the way it works in practice, the way the

1 patent works, if you click that button that says go to, use
2 my Facebook ID and my Google ID, all that happens is behind
3 the scenes, the website you are trying to go to calls over
4 to Google or Facebook or whatever you clicked and says give
5 me their name, give me their e-mail, and I will do the
6 account creation automatically behind the scenes.

7 So the place you are trying to go to will get
8 information about you from Facebook or Google or whatever
9 you clicked, they'll take that information in and, through
10 their own software, they will create an application for you,
11 create an account for you, and then let you come in and use
12 the service. And it's all over the place. It's called
13 social sign on or single sign on, and everybody is doing it
14 now.

15 So those are the four patents in the case.

16 Who is Groupon? Groupon came on the scene in
17 2007 and 2008 but Groupon is not a small company. I don't
18 know how many of you use Groupon, but it is a big company.
19 They have over 6,000 employees throughout the world. And
20 they have approximately 50 million active customers
21 worldwide. 50 million. This is a big company.

22 These are the products that accused in this
23 case. Groupon has a website which looks like that, and you
24 can also use that website on your mobile phone. But then
25 they also have mobile apps. They have an app for Android

1 and they haven an app for Apple. So you will see us talk
2 about the website products and the mobile app products.

3 And it's not news to Groupon that these patents
4 exist. Groupon will admit to you in this trial that they
5 knew about the two Filepp patents, the ones that came out of
6 the Prodigy product. They have known about them since
7 November of 2011.

8 They will admit to you that they have known
9 about preserving state information, the '601, since April
10 2012. And,

11 They will admit to you that they knew about the
12 single sign on application creation patent since August
13 2014.

14 That's just a timeline that fits those dates and
15 perspective.

16 But Groupon did not take a license from IBM, and
17 they used the technology anyway. And that's what this case
18 is about.

19 So in March of 2016, we had to file a complaint
20 in this court to try to get a license for IBM.

21 Now, what is Groupon going to tell you about
22 this case? They're going to tell you they don't infringe.
23 All infringers say that. They're going to say, no, we don't
24 infringe. The lawyers are going to tell you, well, the
25 patent has these words in it and if you interpret this word

1 in this way, then we don't infringe. It's the first thing
2 that every infringer says.

3 But we're going to bring to this trial Douglas
4 Schmidt. Douglas Schmidt has a Ph.D. in computer science.
5 He got his degree at University of California at Irvine. He
6 is a professor right now at the University of Vanderbilt.
7 And he is going to explain to you, no, Groupon infringes.
8 He is going to take you through how their product works, he
9 is going to take you through their computer code, and he is
10 going to go patent by patent, and he is going to explain.
11 It's not just me talking. Professor Schmidt is going to
12 tell you the details of the infringement.

13 And he is going to tell you that Groupon users,
14 when they go over the Internet to the Groupon servers, use
15 Groupon software using the '967 to present applications and
16 Groupon's software is using the '849 to present advertising,
17 and Groupon software is preserving state information the way
18 it tells you to do it in the '601 patent. And they are
19 setting up their accounts using the automatic account
20 creation of the '346 patent.

21 And if you use Groupon, you know that because
22 you go on and you can see: Do you want to sign in by
23 Facebook? Do you want to sign in by Google?

24 Then after professor Schmidt tells you or
25 Dr. Schmidt tells you how Groupon infringes, we're going to

1 bring Professor Hausman to talk fo you. Professor Hausman
2 is an economist. He was educated at Brown University and
3 then got a Marshall scholarship to be trained at the
4 University of Oxford in economics, and he has been teaching
5 at the Massachusetts Institute of Technology since 1972.
6 And he is going to help us come in and value the patents.
7 What should the license be that Groupon owes IBM?

8 Professor Hausman will start by explaining how
9 IBM makes Groupon makes money. They make money by pairing
10 discount merchants with consumers who want discounts. And
11 if they're lucky to conclude a deal, Groupon takes a little
12 piece of the deal. That is how they make their money. They
13 bring the two together, and if the deal closes, they take a
14 piece.

15 And Professor Hausman will talk about how much
16 Groupon is using it. It's called the extended use. He is
17 going to tell you there are a lot of deals. People are
18 looking at Groupon all the time. It's a big deal. People
19 look at it in the morning. They might look at it again
20 later. So there is a lot of repeat use.

21 And to give you a sense of exactly how many
22 people are viewing Groupon, let me show you this board. It
23 is a snapshot from just one week. It's the week of June 4,
24 2017. So last year.

25 If we look at just the website products, unique

1 deal views, that is people looking just once. In one week,
2 almost 12 and-a-half million people looked at Groupon using
3 the website product.

4 If you talk about greater deal usage, those are
5 including the repeats where you look in the morning and
6 maybe go again in the afternoon, it gets up to 15 million.

7 If you add in the touch products, which are the
8 website operating on your phone, it's another 11.6 unique
9 deal views. And if you do you understand the repeats, 15
10 million.

11 And then if you add the mobile apps, it's
12 another 36 million unique deal views or 45 million repeats.

13 So if you add that up in one week's time, 75
14 million, more than 75 million -- I'm rounding it down --
15 more than 75 million folks are looking at Groupon deals in a
16 week.

17 So if you break that up to one day, divide that
18 by seven, you are talking over 10 million deal views a day.
19 All right? So when you are thinking about how much is
20 Groupon using in these inventions, what is the extent of
21 their infringement, it's a big number. They have over 50
22 million customers worldwide and they're getting 10 million
23 views a day.

24 So Professor Hausman is going to tell us that.
25 How do you put a number on that? And the Court will give up

1 instructions how you do it. But it's called a hypothetical
2 negotiation.

3 There was no deal, so there was no negotiation,
4 there was no license concluded, so it's hypothetical.

5 And you have IBM sit down and you have Groupon
6 sit down, and we have to play it out. How would they
7 negotiate a deal?

8 And the one thing the Court will tell us in the
9 instructions is you have to presume the patents are valid
10 and you have to presume they're infringed so Groupon and IBM
11 are sitting at a table and they're going to negotiate and
12 Groupon has to agree it infringes and they have to agree the
13 patents are valid. And they're going to determine what is
14 the economic benefit Groupon is getting from using these
15 patents? How much money? What is their product related to
16 those patents?

17 Once you determine the profit they make,
18 Professor Hausman is going to tell you he is going to go
19 through the factors and how would you split that profit, how
20 do you allocate some to IBM so it's a fair deal? And he
21 explain all that to you. I'm not going to go into the
22 details right now, but it's a big number.

23 You see the 10 million views a day? Keep in
24 mind this is a number for the past. They have known about
25 the patents, the two Filepp patents since 2011. They have

1 known about the '601 patents since 2012. And they have
2 known about the account creation automation patent since
3 2014. So the number is for all of the past up until today.
4 And it's a big number.

5 Professor Hausman breaks it down by patent and
6 then he adds it up and the number is \$166 million. That is
7 what this case is about.

8 Now, I already told you, so let's talk a little
9 bit about what Groupon is going to say. I already told you
10 that they're going to say they don't infringe. Lawyers love
11 the word games. They say if this word in the patent means
12 this, I don't infringe. My client doesn't owe you any
13 money. Everybody does that. It's the first line of
14 defense.

15 When Groupon fails to prove to you that they
16 don't infringe, they're going to come here and tell you that
17 our patents are invalid. They're going to say somebody else
18 did it first. I think one of the things they're going to
19 say is a company in Japan did it first. Everybody does
20 that. Everybody argues, no, I don't want to pay. The
21 patents are invalid.

22 They've got a license defense. The license
23 defense literally makes no sense. What they're going to say
24 is because we licensed Google and because we licensed
25 Facebook, and because Groupon says you can log on with

1 Google and you can log on with Facebook that somehow that is
2 a license for Groupon to do it, too.

3 Well, you are going to see the licenses in this
4 case. And the licenses to Google and Facebook are going to
5 be in evidence. And they say right in them that Facebook
6 and Google, by that license, do not license combinations
7 with other people. It's excluded from the very license
8 agreement that they're relying on in the black-and-white
9 letters.

10 Moreover, the software that does Dr. Hinton's
11 patent is on the Google servers -- excuse me -- Groupon
12 servers. Groupon is creating accounts automatically with
13 their own software. The only thing they get from Google and
14 Facebook is the user's e-mail and name. And they take it
15 and they do the whole account creation themselves.

16 So the idea that they would be licensed by
17 licenses that say these licenses do not transfer to third
18 parties and that they would be licensed when it's their
19 license on their machine is nonsense. It is a defense smoke
20 screen, and you will see from the evidence in this case that
21 that argument makes no sense.

22 They're also going to argue these patents are
23 old. And that's true. I showed you the Prodigy timeline.
24 Two of them are old. Two of them are from 1988 when Prodigy
25 was invented. But old doesn't make them bad. Right? What

1 do we know about technology? When you invent something that
2 is breakthrough, everybody comes next has to build on it.
3 So old doesn't make it bad, old makes it foundational. We
4 did it first. We did it before everybody else.

5 Two of the patents in this case are expired.
6 They're going to say, oh, those patents are expired. You
7 can't -- that's not -- we're not going to give up any money
8 for those.

9 That doesn't make any sense. That is not the
10 law. Expired means Groupon can now use the two now for
11 free. It doesn't mean they can use them in the past for
12 free before they were expired.

13 If you look at the timeline I showed you --
14 there we go.

15 They've known about the Filepp patent since
16 2011. One of those Filepp patents expired in 2015.

17 They owe IBM for that little stub of 2011, 2012,
18 2013, 2014, and for the stub of 2015 before the patent
19 expired.

20 The patent being expired does not excuse
21 infringement. They're going to say it, and they're going to
22 say it, and they're going to say it. It's a smoke screen.
23 It has no merit.

24 The '601 patent they have known about since
25 2012. They owe us from 2012, 2013, 2014, 2015, and the

1 portion of 2016 before it expired, the '601 expired, and the
2 lawsuit was filed in 2016.

3 The other two patents, the '849 and the '346
4 continue to run for years. So those two are not expired.

5 But the fact that two of the patents are expired
6 is not a defense to infringement. It doesn't make the
7 patents invalid. It does not excuse damages. It does not
8 excuse the royalty. It is nonsense. It is a defense smoke
9 screen.

10 The other thing they're going to tell you is
11 that you are just asking for too much money. \$160 million
12 is too much money. They're going to say nobody paid
13 \$160 million.

14 So let's look at what other people pay. I'll
15 leave the others blank, but just to give you a sense:

16 Amazon paid \$49.8 million for a license.

17 Google paid \$35 million for a license.

18 Facebook paid \$20 million.

19 Priceline paid \$34 million plus a contingent \$6
20 million which we will explain.

21 LinkedIn paid \$30 million. And,

22 Twitter paid \$36 million.

23 But that is not all they paid. So don't be
24 misled by this smoke screen. What you are going to find out
25 at this trial, when Professor Hausman takes you through it

1 and when our licensing executive Tom McBride takes you
2 through it, for each one of those deals, in fact, for most
3 of the IBM deals, IBM, in addition to money, gets from those
4 companies a license to all their patents.

5 So take Amazon, for instance. Amazon is huge in
6 cloud computing. Amazon is huge in artificial intelligence.
7 Amazon is huge in servers. As a result of the deal IBM did
8 with Amazon, IBM can now use all of Amazon cloud computing
9 patents, all of their artificial intelligence patents, all
10 of their server patents.

11 Google. Google has a huge portfolio. Quantum
12 computing, right in IBM's sweet spot. Servers, right in
13 their IBM's sweet spot. Artificial intelligence, data
14 analytics, right in their IBM's sweet spot.

15 So each of these deals, in addition to money,
16 IBM got a pile of patents. So that has to be added on to
17 the value.

18 And Professor Hausman is going to tell you how
19 to add that on on the value. Our licensing executive Tom
20 McBride is going to tell you how important it is to IBM and
21 how valuable is to IBM.

22 And that is not all. Every one of these deals
23 were voluntary deals. And IBM, you will learn when Mr.
24 McBride testifies, when somebody is willing to do a
25 voluntary deal with IBM, IBM gives them a huge litigation

1 discount.

2 Why do they do that? If you look at that
3 timeline, this complaint was filed in March of 2016. It's
4 now 2018. It has taken us two and-a-half years to get us to
5 this trial. In that time, we spent millions of dollars in
6 this case.

7 Dr. Hinton is not in the lab. She is here. She
8 is going to spend two weeks with us. Mr. Filepp is not in
9 the lab. He is going to spend time with us here. All the
10 IBM executives and witnesses had to be deposed. Documents had
11 to be disrupted at the company.

12 It is hugely expensive and disruptive to have
13 these cases. So if you can get a company to sign up for a
14 voluntary, IBM makes it a policy of give them a big
15 avoidance litigation discount. Let's do this as
16 businessmen. Let's not fight in court. So every one of
17 these deals has, in addition to patents, a litigation
18 discount.

19 Now, two of these companies did have litigation.
20 Amazon had to be sued by IBM, but then they settled quickly
21 into the lawsuit. So we didn't have the expense, we didn't
22 have the time delay. We didn't have the diversion of
23 resources and inventor time.

24 Facebook went a little further. Facebook, there
25 was a lawsuit with Facebook that went a little further but

1 didn't require a trial like this one.

2 And so the litigation discount for Priceline
3 wasn't as great as the others' and the litigation discount
4 for Amazon, not as great as others; but everybody on this
5 list got a litigation discount.

6 So when you add the value of what they paid plus
7 the value of the patents that they gave back to IBM as part
8 of the deal, plus the litigation discount, you are right at
9 about \$160 million.

10 Now, lastly, I think Groupon is going to make
11 the following argument. Listen, even if that is right, even
12 if \$160 million might sound reasonable when you do the math,
13 we shouldn't pay Groupon. We shouldn't pay \$160 million
14 because we have a very easy and cheap way to do this without
15 using your patents. It's called a design around. And
16 they're going to say they could have designed around. They
17 could designed around for maybe \$3 million and we wouldn't
18 be in this mess and we wouldn't own you \$160 million. So
19 why on earth would we pay you \$160 million?

20 Well, all you have to do, ladies and gentlemen,
21 is take a look at that timeline. They have been infringing
22 these patents since 2011. They knew about the patents since
23 2011.

24 If it was cheap and it was easy to design around
25 these patents and all of this could have been avoided, if

1 the executives at Groupon said to themselves, you know what?
2 It's cheap and it's easy, but we're not going to do it, damn
3 the torpedoes, let's charge ahead. Well, that is willful
4 infringement. So it's either willful infringement or it
5 ain't cheap and easy to design around these patents.
6 Because if it was cheap and easy to design around the
7 patents, they would have done it in 2011 or 2012. We
8 wouldn't be here in 2018 with them still doing it exactly
9 the same way they were doing it back then.

10 Use your common sense. Actions speak louder
11 than words. Look at Groupon's actions of not designing
12 around and that will help you view their words, because if
13 it was clean and easy they would have.

14 Before I sit down, I want to leave you with a
15 thought, and I want to leave you with a commitment. I'm
16 going to promise to you right now that I'm going to prove to
17 you three things. And I call them the bedrock facts. And I
18 call them the bedrock facts because they're so fundamental
19 to this case, they should form the foundation of your
20 deliberations.

21 Bedrock Fact No. 1. IBM invented these ideas,
22 came up with these ideas, thee inventions, these patents
23 before anybody else. These patents are valid.

24 Bedrock Fact No. 2. If it was so cheap and it
25 was so easy, Groupon would have designed around. They

1 didn't. They infringe.

2 Bedrock Fact No. 3. These patents are very
3 valuable. Their reasonable royalty in this case should be a
4 lot more than the voluntary licenses. They should be a lot
5 more than the voluntary licenses because these companies
6 gave IBM a deal without making us go through a trial. They
7 gave IBM a deal where they gave back to IBM all of their
8 patents. The idea that Groupon would get a deal at that
9 level makes absolutely no sense. It is not fair. The
10 proper value of this case is \$160 million.

11 Now at the end of the trial I'm going to get to
12 speak to you again in the closing argument. I'm going to
13 remind you of these three bedrock facts. IBM did it first
14 in each of these four patents. If Groupon could have
15 designed around, they would have and they didn't. They
16 infringe. And the reasonable royalty in this case to IBM
17 should be very substantial. It should be \$160 million.

18 Thank you.

19 THE COURT: Thank you. Ladies and gentlemen,
20 we're going to give you a break before we hear from the
21 defendant. During the break, no talking about the case and
22 we will come look for you in about 15 minutes.

23 (Jury left courtroom.)

24 THE COURT: All right. So we may get to the
25 first witness. Every one else can sit or leave but let's

1 hear the objection, if there are any, to the first witness.

2 Ms. Shamilov.

3 MR. DESMARAIS: Should I move the patent?

4 THE COURT: I think so, yes.

5 MS. SHAMILOV: Your Honor, I believe the first
6 witness will be Mr. Filepp, the inventor of the Prodigy
7 patent. This is the slide in a demonstrative to be used
8 with him. So this appears to be providing the Prodigy
9 service in context, the title says in context, so it appears
10 that they are going to be talking about the state of the art
11 before the patents, what was around at the time and before
12 the patents. And then everything all the way down to 2008,
13 so what is happening now.

14 In initial disclosures throughout this case
15 Mr. Filepp has consistently told us he only knows about the
16 subject matter of his patent, file history, conception and
17 reduction to practice and products incorporating these two
18 patents. That is it. Here is basically going to be
19 providing expert testimony about what was the state of the
20 art and what is happening in the modern world, that is not
21 what he's been told his knowledge is in this case. And he
22 certainly was not disclosed as an expert witness as an
23 employee expert witness, there has been no identification of
24 that or disclosure of that. This is the basis of the
25 objection of the slide and basically the objection to the

1 subject matter of the testimony that is relating to the
2 demonstrative.

3 THE COURT: Thank you. I'll hear from IBM.

4 MR. DESMARAIS: Your Honor, my colleague,
5 Mr. Harrits, will address that if that's okay.

6 THE COURT: Sure.

7 MR. HARRITS: Your Honor, Robert Harrits on
8 behalf of IBM. Mr. Filepp is coming in to testify as a fact
9 witness and will be providing testimony about facts that he
10 is aware of. He will only be testifying about facts related
11 to the Prodigy system.

12 THE COURT: Is he going to talk about the prior
13 art that we just saw on the screen.

14 MR. HARRITS: The things that come before
15 Prodigy, he will be mentioning that that was stuff that was
16 around while he was developing his technology.

17 THE COURT: Is that fact testimony or is that
18 expert testimony.

19 MR. HARRITS: It is fact testimony about things
20 that he encountered that led him up to coming up with the
21 inventions in his patent.

22 THE COURT: And what about this stuff that
23 postdates his invention, is he going to testify about that.

24 MR. HARRITS: He will not be testifying about
25 that. He will be testifying about what is just up to his

1 invention.

2 THE COURT: Are you agreeable to modify the
3 slide to take everything off that comes off?

4 MR. HARRITS: Yes, we are.

5 THE COURT: So everything to the right of
6 Prodigy will come off of the slide?

7 MR. HARRITS: We will.

8 THE COURT: And in terms of the prior art that
9 you want him to testify about, what about the contention
10 that he's not previously indicated that he actually has any
11 knowledge about that, that seems to be the argument that he
12 was not disclosed as someone who knew anything about the
13 prior art.

14 MR. HARRITS: I believe he was put up on a
15 30(b)(6) topic regarding the prior art, so he was testifying
16 on behalf of IBM what was known of the prior art.

17 THE COURT: Thank you.

18 MS. SHAMILOV: The initial disclosures don't
19 mention anything about the prior art or state of the art and
20 certainly we have stuff on this slide that goes back to 1969
21 and I don't think Mr. Filepp has any testimony that he can
22 say that in 1969 he was trying to invent Prodigy.

23 THE COURT: If he's disclosed as an inventor and
24 undisputedly he is an inventor named on the patent, doesn't
25 it follow that he would know something about what existed at

1 the time of the invention?

2 MS. SHAMILOV: That's no where on the initial
3 disclosure of his knowledge. We want to see that data slide
4 because we were not provided the data slide. We were not
5 actually provided any boards for that matter.

6 THE COURT: If you have an objection to that.

7 MS. SHAMILOV: I didn't want to interrupt the
8 opening. But I would love to see the updated slides before
9 we can agree that this can go in. And if they remove
10 everything after the Prodigy service, then it's probably --
11 I'll just listen to what he's going to say and may raise an
12 objection.

13 THE COURT: Well, we do the slide consistent
14 with the representation, but the witness won't be offering
15 testimony as I understand it for the time frame post
16 Prodigy. And consistent with that we're going to remove
17 post Prodigy from the timeline. And I think the objection
18 has been withdrawn with respect to let's say the left side
19 of the slide, but to the extent it hasn't, I'm overruling
20 the objection. It will be fact testimony. If you think
21 he's straying to the expert side, then object on a
22 question-by-question basis. We'll deal with it.

23 Now, with respect to the boards, it certainly is
24 a concern to me if you didn't know about it. And I know it
25 created some awkwardness for where you could stand. But do

1 you have a request for some relief? Are you objecting?

2 MS. SHAMILOV: No, going forward I want to have
3 notice if there will be boards in the court.

4 THE COURT: We certainly won't have this again
5 in the closing. We're going to work this out.

6 MR. DESMARAIS: Everything was disclosed. All
7 of this was disclosed.

8 THE COURT: I'm told it wasn't.

9 MR. DESMARAIS: No, no, let me just be clear,
10 because I certainly know the rules, Your Honor, the
11 entire -- every slide that I used was disclosed.

12 THE COURT: Did you disclose that you were going
13 to blow it up as a board and display it separate from the
14 screen?

15 MR. DESMARAIS: No, but the pretrial order
16 doesn't require that. The pretrial order says disclose your
17 demonstratives. There is nothing in the pretrial order that
18 says disclose the manner in which you're going to use them.

19 THE COURT: I hereby order you will disclose the
20 manner in which you're going to do that for closing. Don't
21 feel any obligation for your opening to do any more than
22 what was extended to you by plaintiff.

23 MS. SHAMILOV: Thank you, Your Honor.

24 THE COURT: All right. We'll be in recess.

25 (A brief recess was taken.)

1 THE COURT: All right. Bring the jury in.

2 (Jury entering the courtroom at 3:45 p.m.)

3 THE COURT: Welcome back, ladies and gentlemen.

4 I want to just apologize again, I know the courtroom is a
5 lot less comfortable than out in the hallway there. We have
6 made the calls that we can make. I don't know if it will
7 get better today, but I certainly expect it will tomorrow.

8 With that, it's time for Groupon to make their
9 opening statement.

10 MR. HADDEN: May it please the Court, ladies and
11 gentlemen of the jury, why are we here? As you will hear
12 from IBM's own witnesses, we're not here because IBM and
13 Groupon are competitors. They are not. And we are not here
14 because these four patents protect IBM's products or
15 technology. They do not. IBM's own witnesses will testify
16 that IBM did not even use these patents. As you heard, two
17 of them were filed thirty years ago. Two have expired.

18 We are here because IBM has another business, a
19 business that IBM doesn't talk about in its TV commercial.
20 In that business, IBM does not make any products or
21 services. In that business, IBM uses its huge stock of
22 patents as a club to get money from other companies. As
23 part of that business, IBM is demanding that every company
24 that does business on the worldwide web has to pay IBM.

25 You will hear from Mr. McBride, IBM's licensing

1 executive, that IBM has gone after every significant company
2 on the web.

3 This is just a sampling. IBM has gone after
4 travel companies, AirBNB, Travelocity, Orbitz, Expedia, IBM
5 has gone after as you heard, they sued Amazon, they have
6 gone after LivingSocial, they have gone after shopping sites
7 on the web. IBM has gone after all of the social media
8 sites, Facebook, Yelp, LinkedIn. IBM has even gone after
9 all the cable TV, internet TV and satellite TV companies
10 from Direct TV to Hulu. IBM has also gone after the search
11 engines like Google.

12 The only thing these companies have in common is
13 that they use the worldwide web. And you'll hear from
14 Mr. McBride, that's the only reason IBM went after Groupon.
15 Groupon was operating on the worldwide web and it was
16 growing.

17 Now, IBM is not just going after companies that
18 operate websites. In this case, IBM is accusing Groupon
19 customers and end users, people who just visit the website
20 of infringing IBM's patents.

21 Now, it's unlikely that IBM is going to sue
22 everyone who visits Groupon's website or all of the other
23 websites that IBM is going after. But IBM is claiming in
24 this suit that it could. So a key question for you to
25 decide in this lawsuit is whether these patents from IBM

1 cover the worldwide web. And whether they cover the
2 standard web technology that is used not just by Groupon,
3 but by millions of websites in the world.

4 And the evidence will show that those patents do
5 not. And the reason they do not is that IBM didn't invent
6 the worldwide web.

7 The worldwide web was invented by Tim
8 Berners-Lee in a laboratory in Switzerland. And Tim
9 Berners-Lee invented the idea of a worldwide web of
10 information on computers all over the world that could be
11 accessed by users by just clicking on links. But he didn't
12 just invent that idea, he invented the technology that made
13 it a reality.

14 That technology includes HTTP which you probably
15 seen in your browser windows, that's the Hypertext Transfer
16 Protocol, that's what's used to communicate data on the web
17 and connect the web. He also invented Hypertext Markup
18 Language, or HTML, which is the language that's used to
19 create web pages. It is that technology that makes the web
20 the web, and it is used by literally millions of websites
21 today.

22 Importantly, Tim Berners-Lee made a decision.
23 He decided that he wasn't going to patent his invention.
24 Instead, he decided that to make his vision of the worldwide
25 web a reality, he was going to give his ideas to the public.

1 He gave his invention to everyone, you and me, everyone.

2 And he did that so that everybody could use it freely, and
3 so that the web would grow.

4 And you're going to meet in this case one of
5 those early web developers who benefited from Tim
6 Berners-Lee's decision to give the web to the public, and
7 his name is Paul Davis. He was, in fact, the second
8 employee hired by Jeff Bezos when he founded Amazon back in
9 1994. And Paul Davis actually developed the original Amazon
10 website that launched in 1995. And Mr. Davis will testify
11 that for the early web, and the reason that it grew to what
12 it is today is due most to the technology that Tim
13 Berners-Lee invented, HTTP and HTML, but actually more
14 importantly that Tim Berners-Lee gave that technology to the
15 public so that everybody can use it. And that's really why
16 we have the worldwide web we have today. It is a source of
17 information, commerce and entertainment from hundreds of
18 millions of people every day. And it is that because Tim
19 Berners-Lee invented the technology and gave it to the
20 public to use.

21 You're also going to meet in this case Jason
22 Carlisle who is a vice-president at Groupon. He will
23 explain how Groupon uses that technology, the worldwide web,
24 to help local merchants find new customers and thrive and to
25 help consumers save money and discover new things to do and

1 new merchants in their community.

2 So let's look at these patents because we didn't
3 see much of them in IBM's presentation. Let's start with
4 the Prodigy patents, the '967 and the '849. These are the
5 two patents that IBM is claiming give them rights to the
6 web.

7 And as you see, they were filed thirty years
8 ago, and two have already expired. So what are they really
9 about? Well, as you heard, Prodigy was an online service.
10 It was created by Sears and IBM. CBS was involved early,
11 but then dropped out, so it was primarily Sears and IBM.

12 And in Prodigy, information was presented to the
13 user as a series of screens, like a slide show. You could
14 click on buttons to move forward or backward through these
15 screens of information. Prodigy looked nothing like the web
16 and Prodigy worked nothing like the web.

17 In fact, Prodigy was based on earlier technology
18 called Videotex. Videotex was also a similar screen base,
19 it provided screens of information. And in Videotex those
20 screens would get sent down to your computer as one full
21 screen at a time. You'll hear some of this from IBM's
22 inventor, Mr. Filepp. You would click and get screens and
23 move on to the next screen.

24 Now, the big invention that Mr. Filepp came up
25 with in Prodigy was to divide the users screen into these

1 partitions. And the benefit for that was that now you could
2 fill this screen in by sending down the different pieces of
3 information that would fit into each of those areas piece by
4 piece. And then you could have the software on the user's
5 computer put those pieces in these predefined screen areas
6 to fill the user screen. That was the innovation that
7 Mr. Filepp and Prodigy provided over Videotex.

8 Now, if you think about it, to make this work,
9 and the only reason it worked was because Prodigy was a
10 closed system. Everything you could see on Prodigy, any
11 screen on Prodigy, any piece of text, any graphic, this
12 graph like this, it all came from a single database on a
13 single IBM mainframe computer. So Prodigy had complete
14 control how every piece of information looked and equally
15 importantly how big it was.

16 So the way it worked was if you had an area on
17 the screen you need to fill, Prodigy would know what the
18 size of the area of the screen was because they predefine it
19 and they could send down a piece of information that would
20 precisely fit in that area so you could fill the screen in
21 this way. In the end of that process you had essentially a
22 Videotex screen. That is, in fact, not the way the
23 worldwide web works. In the worldwide web, the whole point
24 of the worldwide web is you have a web, you have a web of
25 millions of computers all over the world and you can get

1 information from any of those millions of computers by
2 clicking a link in your web browsers.

3 If you think about this picture, it's clear,
4 there is no single entity that controls the worldwide web.
5 There is no one to dictate what information you provide to
6 the screen and how big it is to determine if it will fit in
7 a predefined area of your screen. That's just not the way
8 the web worked. It only worked in Prodigy because all the
9 information is controlled by Prodigy and comes out of one
10 database.

11 If we go back just for a second, IBM's slides
12 showed throughout a cloud representing the network, and just
13 to be clear, the network that connected this computer to
14 that server at IBM in Prodigy was not the internet, it was
15 not the worldwide web, it was a proprietary dedicated
16 network built by IBM that essentially went from your
17 computer through a telephone line to a modem bank at IBM to
18 that single computer. Everything came from the mother ship.
19 That's not the way the worldwide web works. That's not the
20 way the internet works.

21 So if we go back and look at Prodigy and
22 Mr. Filepp's invention, so one of these areas of the screen
23 that your screen would be divided into was reserved for the
24 information that you were requesting. It could be stock
25 quotes, it could be news, it could be weather information.

1 Those were called applications in Prodigy. So there is one
2 area of the screen that that information would be displayed
3 in. Everything that would go in that area would be
4 predefined to fit in that predefined area. There was
5 another area of the screen that had command functions. That
6 is how you would move between these screens of information
7 with this next and back button, you can see up there, or you
8 can select another application so you could go from Prodigy
9 weather to Prodigy news by selecting one of those buttons.

10 Now, that is in fact what the '967 patent is
11 about. It's about predefining areas of the screen for these
12 Prodigy applications and for command functions that allow
13 you to move between those applications and presenting those
14 together on a single screen. As you'll see and as the
15 evidence will show, that's not the way the worldwide web
16 works.

17 In addition, Prodigy wanted to make money by
18 selling advertising. So there was another area that was
19 reserved on the screen for advertising. So the idea was
20 that because the advertising would be in its own area of the
21 screen, it wouldn't interfere with the user needing the
22 information it wanted which would be displayed in the
23 application area of the screen.

24 So the '849 patent is about having another area
25 of the user screen for presenting advertising. And because

1 the advertising was separate from what was displayed in the
2 application area, Prodigy could send those advertisements
3 down to the user's computer. They could preload them. And
4 then whenever the user -- a new screen was needed to be
5 displayed, Prodigy could go -- the Prodigy software on your
6 computer could pull up one of those advertisements and plop
7 into that area of the screen. And, again, like everything
8 else in Prodigy, those advertisements came out of that one
9 database in that one IBM computer. So they could all be
10 designed to exactly fit into that advertising area on the
11 screen.

12 This displaying of these prestored
13 advertisements on an advertising area of the screen is what
14 the '849 patent is about. And, again, that is not the way
15 the World Wide Web works, as the evidence will show.

16 Now, Prodigy failed. It was shut down 20 years
17 ago. In fact, you will hear from Mr. Filepp, the Prodigy
18 inventor he was laid off in 1997.

19 Now, if you think about it, 1997, when Prodigy
20 is failing, that is when the World Wide Web is exploding.
21 And as Dr. Jon Weissman, the Groupon's technical expert, who
22 is sitting right over there, will explain, that is not a
23 paradox. The web was exploding because Prodigy was not the
24 web. Prodigy was not even a precursor to the web. The web
25 was new technology and different technology and it worked

1 nothing like Prodigy. And that is why, in 1997, based on
2 Tim Berners-Lee invention, the World Wide Web took off,
3 Prodigy was shut off. Mr. Filepp was laid off.

4 Just one second.

5 Now, you heard some suggestions from IBM's
6 lawyer that the idea of storing information on the user's
7 computer or using a non-dumb terminal, it is a computer that
8 could actually do things, was somehow a new invention in
9 Prodigy.

10 That is not the case, as you will hear from
11 Dr. Weissman. Dr. Weissman's specialty is what is called
12 distributive computing, when means you have computers doing
13 different things that talk to each other. And he will
14 explain that the idea of storing some information on a
15 user's local computer and having that computer do actual
16 real work did not come from Prodigy. It is a basic
17 fundamental idea in computer science that came decades
18 before these patents.

19 And they it didn't get to the web through
20 Prodigy. As Dr. Weissman will explain, there is no lineage,
21 quite frankly, if you will, from Prodigy to the World Wide
22 Web. There was Prodigy which was based on videotex. It
23 died. Basically Prodigy was the last gasp of what is now
24 extinct technology, videotex. The World Wide Web was born,
25 it was new, it was different. It works different.

1 How can we see it works different? Well, a web
2 page is a document but it is a document that is written in
3 that HTML language that Tim Berners-Lee invented. And
4 because it's a document, Groupon and other websites don't
5 control your computer screen. And they don't divide your
6 computer screen into areas. They send you a document and
7 you can look at that document using your web browser
8 anywhere you want on your screen. And you can look at any
9 part of that document anywhere you want on your screen by
10 scrolling up and down.

11 So if you get a web page, you can scroll down,
12 you can see as much of the information on that page and you
13 can see it anywhere you want. And you can also put your
14 browser window anywhere on the screen. And you can make it
15 as big or as small as you want. And within your browser
16 window, you can change your view so you can zoom in and see
17 make it as big and as small as you want anywhere on your
18 screen.

19 Now, you can do that because Groupon and the
20 World Wide Web in general don't divide your screen into
21 areas. They don't generate areas on your screen. They send
22 you one of these HTML documents, and you look at it in a
23 browser, and you can look at any part of it anywhere you
24 want any size.

25 For that reason, the evidence will show that

1 Groupon does not use the Prodigy patents. And that IBM will
2 be unable to meet its burden to prove that it does.

3 Now, IBM's counsel said something in its opening
4 that Groupon will have to prove it doesn't infringe. That
5 is not the law. The burden of proving infringement is on
6 IBM. IBM has to prove that Groupon infringes, and IBM won't
7 be able to do that in this case.

8 Now, there are two other patents that IBM has
9 asserted. The next one is the '601 patent which was filed
10 22 years ago and has also expired.

11 Now, what is this patent about? It is
12 essentially about a specific method for working around a
13 feature of the World Wide Web. So as I said, the World Wide
14 Web is based on this HTTP protocol. And a feature of that
15 protocol is what is called stateless.

16 So what does that mean? That means when you
17 send a request to a web server from your web browser; right?
18 You type in a URL, you want to go to, your web browser sends
19 a request over at the real Internet this time. That is why
20 we have the Internet cloud lingo. The web server will
21 respond with a web page. You will get the web page.

22 Now, at that point, the web server forgets all
23 about that request. So each request to a web server is
24 handled separately by the web server and it doesn't have any
25 memory of what it did before.

1 Now, Tim Berners-Lee made the web this way
2 because it is very efficient, if you think about it. If you
3 have a web server that is receiving a lot of requests from a
4 lot of different users, the easiest way is to respond,
5 forget, wait for the next request. That is the way the web
6 works.

7 Now, that can be a problem if you are trying to
8 track what a specific user is doing on a website. So if you
9 have a shopping site like Amazon and you want to track what
10 items people are putting in their shopping carts, you need
11 to know that those requests for different items are coming
12 from the same user, or at least the same browser, so you
13 know what shopping cart to put them in.

14 Now, there is actually a standard way to solve
15 this problem now. And the standard way is when you first go
16 to a website, the web server will assign you an identifier.
17 And it is often called a session ID. And it will store that
18 session ID in what is called a cookie which is just a small
19 file of information that gets sent back with the web
20 response, with the web page from the web server, and it gets
21 stored on your computer.

22 Your browser will know that the next time you go
23 back to that same website, to send with the request, I'll
24 click on the buy line here, my request will automatically go
25 along with the cookie, and the cookie automatically gets

1 sent for free along with the request to the web server.

2 And when that happens, the web server can then
3 read the session ID and the cookie and figure out who it is
4 talking to and it can do things like now I know that this is
5 the session ID that corresponds to Customer No. 4, and I can
6 put this item in Customer No. 4 shopping cart and everything
7 will work fine.

8 So that is the way this stateless problem is
9 generally solved today on the web.

10 And Phillip Dunham, who is sitting over here,
11 who is a senior engineering manager, will be here and
12 explain how Groupon uses cookies to solve the statelessness
13 problem on the Groupon website.

14 Mr. Dunham will explain that, in fact, Groupon
15 is so reliant on this cookie technology, the users on a
16 Groupon site cannot make purchases if they disable cookies
17 on their browsers. So cookies are the only way to put
18 things in your shopping cart or buy on Groupon.

19 Now, importantly, IBM did not invent cookies. A
20 company called Netscape invented cookies, as the '601 patent
21 explains. This was from this IBM '601 patent. Cookies were
22 prior art. They were a known solution at the time of the
23 '601 patent. And the patent explains that.

24 So what does the '601 patent talk about? Well,
25 the '601 patent is about basically an alternative method for

1 passing this session ID or other state information back and
2 forth between the server and the browser, if you don't want
3 to have cookies.

4 And the way it does it is instead of putting it
5 in a cookie, it puts that information in the links on what
6 gets returned to the browser and that is what is described
7 here.

8 So what does that mean? Well, you know when you
9 click on a hyperlink, there is some information that gets
10 sent to the web server that basically identifies the web
11 page you are asking for.

12 So what the '601 patent does is it adds to those
13 links additional information, the state information like
14 session ID, so that when a user, before the page gets sent
15 to the user, the web server will add to those links, the
16 session ID of that particular user. So it will modify the
17 links in the web page that is being sent back to the user to
18 include the session ID or other state information.

19 And then the page gets to the user. If they
20 want to click on any of those links, the links will already
21 have the session idea or state information in them.

22 So when the user clicks on one of those, along
23 with the normal URL that identifies the web page they want,
24 the URL will include the session ID which will tell the web
25 server who it is talking to essentially.

1 So this is an alternative to cookies.

2 Now, the problem with this approach is -- well,
3 there is a couple of problems:

4 One, it's slow because you have to, the web
5 server has to modify every page for every user to add their
6 specific session ID to the links.

7 And the other problem is if it misses a link.
8 So if it leaves a session ID out of some of the links and
9 the user then clicks on one of those links, they're lost
10 because basically the server doesn't know now who it is
11 talking to, and it can't figure out where it is in the
12 session.

13 For that reason, even IBM never used this
14 patent. And you will hear that from their own inventor.
15 IBM also used cookies instead. So IBM, like Groupon, like
16 almost every site on the Internet, uses cookies instead of
17 this patent. It never used it.

18 Now, Groupon doesn't use it either, as Phil
19 Dunham will explain. When you are in the process of making
20 a purchase on Groupon, after you pick an item, put it in
21 your shopping cart, you get a page like this. And this page
22 has a butch of links on it. You can click on all these
23 links. And then you click on the last link if you want to
24 proceed and complete your purchase.

25 But as Phil Dunham will explain, none of these

1 links have a session ID or any other state information in
2 them. And that is because Groupon doesn't use this
3 technique. It uses cookies. So the cookie will tell
4 Groupon's server who this user is and what item to put in
5 what shopping cart.

6 Now, interestingly, cookies were not always
7 accepted. So early in the World Wide Web, in the early
8 90s, 1993 and '94, many web developers were suspicious of
9 cookies. You may hear things today about you get people's
10 cookie policy when you click on a website or they're private
11 cookies. That was an even bigger concern in the early days
12 of the web. So a lot of developers thought it was a bad
13 idea for a server to write information on the user's
14 computer basically without them knowing it, which is what
15 cookies do.

16 One of those developers was Mr. Davis again, the
17 second employee at Amazon who built Amazon original website
18 and before coming to Amazon, you will hear from Mr. Davis,
19 that he was at the University of Washington's computer
20 science department, and he didn't think cookies were a good
21 idea. So he came up with the idea of putting state
22 information, like session ID in links instead. Exactly the
23 same idea that is in the IBM patent. But Mr. Davis came up
24 with it two years earlier. And, in fact, he used it when he
25 built Amazon's original website in 1995.

1 This is an image from the home page of Amazon
2 when it originally launched out of Mr. Bezo's garage in
3 1995. And Paul Davis will be here as a witness and will
4 explain how he built this website and how he used this
5 alternative to cookies as a way to keep track of what items
6 people were purchasing at Amazon.

7 Now, unfortunately, the Patent Office didn't
8 know about Paul Davis and their work. So you will be the
9 first people who will be hearing his story and understand
10 how it relates to this patent. And the evidence will show
11 that it invalidates this patent. The Patent Office didn't
12 know that he had his idea first and he used the idea in a
13 big way actually on Amazon's website.

14 So that leaves one patent, the '346 patent which
15 we heard about, which is Dr. Hinton's patent. And we heard
16 some about single sign on. And you can single sign on at
17 Groupon. You click on the sign in button and you get a
18 screen like this. And if you have an account on Groupon
19 already, you can fill in your e-mail and password and click
20 sign in, or if you have an account on Facebook or Google,
21 you can sign in using Facebook or Google, your credentials
22 there, and not have to type in your e-mail password.

23 Now, there is no dispute this is a convenient
24 feature. But there is also no dispute that this is not what
25 Dr. Hinton invented. Single sign on was known before this

1 patent. Dr. Hinton will testify to that.

2 What this patent is about is not single sign on.
3 This patent is about a specific way to create a new user
4 account in the middle of a single sign on operation. And
5 as you will hear, part of the requirement for Dr. Hinton's
6 patent is that the website that you are trying to access has
7 to initiate or trigger the single sign on operation before
8 all this account creation takes place.

9 And that's not the way Groupon works. So what
10 happens on Groupon is if you don't have an account, you get
11 a page like this which allows to you create a new account.
12 It's called signing up at Groupon as opposed to signing in.
13 When you get this page, you can either put in your name,
14 email address and password and create a new account directly
15 on Groupon, or you can click on one of these sign up with
16 Facebook or sign up with Google button. If you click the
17 sign up with Facebook button, software in your browser, that
18 your browser down loads from Facebook will send a request
19 directly to Facebook, it doesn't go to Groupon, it goes
20 directly to Facebook.

21 In response, Facebook sends back this web page
22 from Facebook, which allows you, the user to log in and then
23 start the process of creating a new account. This is all
24 between user and Facebook. This is not going through
25 Groupon. Groupon did not trigger this process, Groupon does

1 not provide this screen. Groupon does not even provide the
2 software that calls Facebook, that's all Facebook
3 technology.

4 Similarly for Google, if you click on the Google
5 sign on button, your browser sends a request not to Groupon,
6 but to Google and Google will send back this web page that
7 allows you to sign in and start the process of creating a
8 new account. All of that is between your browser and
9 Google, not Groupon.

10 Now, the fact that this happens in this way
11 between the user's browser and software downloads from
12 Facebook and Google in those servers is important for two
13 reasons. First it means that Groupon does not trigger a
14 single sign on operation so we don't use this patent.
15 Second, it means if even if we did use this patent, these
16 companies are already licensed. Facebook and Google. And
17 as we'll see, they're licensed to provide services and what
18 are called API, Application Programing Interfaces, which is
19 what other services talk to to provide this very service.
20 And that's important because IBM can't charge Groupon for
21 using a service it is already licensed Facebook and Google
22 to provide. It's like you can't sell your house to one
23 person, collect their money and then sell the same house to
24 someone else. That's not what you can do.

25 There is one more problem with this patent.

1 First, everything in the patent talks about single sign on,
2 and single sign on technology was already known. And, in
3 fact, Dr. Hinton will testify, it was described in standard
4 industry technical specifications, many of them are from
5 this organization called Liberty Alliance which you'll hear
6 more about. But Dr. Hinton and her colleagues at IBM
7 studied those specifications and used them to implement the
8 single sign on functionality at IBM. The only thing that's
9 not described in these specifications was the idea of
10 creating a new account in the middle of that process. But
11 in fact that simple idea was also known before IBM.

12 And it was just known by two different
13 companies. The first is Xerox. And Xerox filed its
14 application, we heard Mr. Desmarais said it was in Japan it
15 was filed first in Japan. Nothing wrong with that. And it
16 describes exactly this process. This is a flow chart from
17 the patent. It shows that you're starting at single sign
18 on, SSO stands for single sign on. It's just shorthand.
19 You start that process, you get a single point here and you
20 check, does user account exist? So these diamonds in these
21 flow charts means that's a decision point, you have gone
22 through a process, you make a decision. You check there.
23 Does the user have an account, and if he doesn't, you get
24 information from the SSO server which is the identity server
25 that IBM's counsel talked about, you get all the information

1 you need and then you have create a user account. This is
2 exactly what is described in IBM's '346 patent. And it was
3 done and described first by Xerox.

4 The other company that had the idea first was
5 Novell which is a networking company in Silicone Valley, and
6 they had a similar idea. So you would be in one of these
7 single sign on processes, you would do this check, user has
8 an account on this site, again a diamond, decide yes or no,
9 if not, you proceed get this to this side, site generates
10 new user account. Exactly the same idea that's in
11 Dr. Hinton's patent. It was done before and in fact
12 patented by Novell.

13 Again, unfortunately neither the Liberty
14 Alliance specifications nor these two patents to Novell and
15 Xerox were provided to the patent office. So the patent
16 office didn't have this information when it allowed the '346
17 patent to issue.

18 So at the end of this case, you're going to be
19 asked to make some determinations, determinations about
20 infringement and determinations about invalidity. And
21 because Groupon does not use any of these four patents, the
22 evidence will show that IBM will be unable to meet its
23 burden of proof of proving infringement.

24 In addition, because two of these patents were
25 already described, well, you heard prior art, they're

1 already known, they're already done either by Mr. Davis at
2 Amazon or in those patents to Xerox and Novell. In all
3 cases that information was not before the patent office and
4 the patent Examiners did not consider it in allowing those
5 patents. Because of that, the evidence will show, and in
6 fact two of these patents are invalid over the prior art.

7 Now, the way the trial works is you heard from
8 Judge Stark, he said IBM gets to go first. So you will not
9 be hearing from Groupon's witnesses for several days. I ask
10 you to please be patient and keep an open mind until you get
11 that opportunity, and I thank you very much for your time
12 and service.

13 THE COURT: Thank you very much. So ladies and
14 gentlemen, it's pretty close to 4:30. So I'm going to let
15 you go a few minutes early today. Just a few words about
16 tomorrow. We'll be with you from 9:00 until 4:30. As I
17 have said, we're able to order lunch for you in order to do
18 that efficiently skilled that you get here a few minutes
19 before nine o'clock so that we'll probably have a menu in
20 the jury room waiting for you and you'll be able to figure
21 out what you want and let us know all before you get started
22 at 9 o'clock. We'll be here until 4:30 tomorrow.

23 While you're aware from us, it's very important,
24 please no talking about the case with each other or anyone
25 else. Don't do any research or look for other information

1 related to the case. As I have indicated to you in my
2 instructions, please don't use Groupon during the time that
3 you're on this jury. And I think that is it. We'll hope
4 that the temperature is better in here tomorrow and we'll
5 see you tomorrow morning. Have a good night.

6 (Jury left courtroom.)

7 THE COURT: You can have a seat.

8 Just a couple of comments in terms of issues.
9 In terms of openings and what happened here, I want to make
10 very clear for any future witnesses and certainly for
11 closing argument, you all are obligated to disclose to one
12 another not just, let's say, the substance of what you are
13 using in your slides but also what let's call it medium you
14 are going to use. if it's going to be on the screen, it's
15 going to be in a cardboard cutout, if it's going to be a pad
16 that you are going to use, I want each side to know how you
17 are going to present it.

18 Among other things, I think that is just fair to
19 both sides, but where we put things in the courtroom can be
20 very tricky. And I think it was unfortunate that defense
21 counsel in the very beginning of the trial had to figure out
22 whether she could see what was going on, where to stand, and
23 it was very hard to work out in real-time with no notice to
24 any of us while the jury was sitting there. So I don't want
25 anything like that to happen again.

1 Further, I do have a rule. I think it probably
2 didn't come up in the pretrial order, the pretrial
3 conference. I can take the blame for that. But I prefer
4 counsel to say within arm's length of the podium. So when
5 you are doing your examinations or when you are doing your
6 closings, you should basically be able to touch the podium.
7 So let's comply with that going forward.

8 I will be available at 8:30 tomorrow if there
9 are any issues but any questions about any of that or any
10 other issues from IBM?

11 MR. DESMARAIS: No, Your Honor.

12 THE COURT: Okay. And from Groupon?

13 MR. HADDEN: No, Your Honor.

14 THE COURT: Okay. We'll see you tomorrow
15 morning.

16 (Proceedings end at 4:30 p.m.)

17
18 I hereby certify the foregoing is a true and accurate
19 transcript from my stenographic notes in the proceeding.

20 /s/ Brian P. Gaffigan
21 Official Court Reporter
22 U.S. District Court
23
24
25